1	THEODORE J. BOUTROUS JR., SBN 132099	MARK A. PERRY, SBN 212532
2	tboutrous@gibsondunn.com	mperry@gibsondunn.com
2	RICHARD J. DOREN, SBN 124666 rdoren@gibsondunn.com	CYNTHIA E. RICHMAN (D.C. Bar No. 492089; pro hac vice)
3	DANIEL G. SWANSON, SBN 116556	crichman@gibsondunn.com
5	dswanson@gibsondunn.com	GIBSON, DUNN & CRUTCHER LLP
4	JAY P. SRINIVASAN, SBN 181471	1050 Connecticut Avenue, N.W.
-	jsrinivasan@gibsondunn.com	Washington, DC 20036
5	GIBSON, DUNN & CRUTCHER LLP	Telephone: 202.955.8500
	333 South Grand Avenue	Facsimile: 202.467.0539
6	Los Angeles, CA 90071	
	Telephone: 213.229.7000	ETHAN DETTMER, SBN 196046
7	Facsimile: 213.229.7520	edettmer@gibsondunn.com
	,	ELI M. LAZARUS, SBN 284082
8	VERONICA S. MOYÉ (Texas Bar No.	elazarus@gibsondunn.com
	24000092; pro hac vice)	GIBSON, DUNN & CRUTCHER LLP
9	vmoye@gibsondunn.com	555 Mission Street
1.0	GIBSON, DUNN & CRUTCHER LLP	San Francisco, CA 94105
10	2100 McKinney Avenue, Suite 1100	Telephone: 415.393.8200
1.1	Dallas, TX 75201	Facsimile: 415.393.8306
11	Telephone: 214.698.3100	Attaurant for Defendant ADDITING
12	Facsimile: 214.571.2900	Attorneys for Defendant APPLE INC.
12		
13		
14		
15	LINITED STATE	ES DISTRICT COURT
1.0	CIVILD STATE	ES DISTRICT COCKT
16	FOR THE NORTHERN	DISTRICT OF CALIFORNIA
17	TOR THE NORTHERIV	DISTRICT OF CALIFORNIA
1 /	OAKLA	ND DIVISION
18		
19	EPIC GAMES, INC.,	Case No. 4:20-cv-05640-YGR-TSH
	D1 1 100 G	NOTICE OF THE INC OF PETENDANT
20	Plaintiff, Counter-	NOTICE OF FILING OF DEFENDANT
21	defendant	APPLE INC.'S DEPOSITION DESIGNATIONS PURSUANT TO TRIAI
21	V	ORDER NO. 2
22	V.	ORDER NO. 2
22	APPLE INC.,	
23	THI LE IIVE.,	
23	Defendant,	
24	Counterclaimant.	
25		
26		
<u>, ,                                  </u>		
27		
28		
40		

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 2 of 184

PLEASE TAKE NOTICE that Apple Inc. hereby files the following deposition designations pursuant to Trial Order No. 2, which granted in part and denied in part Apple's motion to file portions of the below deposition designations under seal: 1. Joe Kreiner 2. Haseeb Malik 3. Mark Rein Dated: May 14, 2021 Respectfully submitted, GIBSON, DUNN & CRUTCHER LLP /s/ Rachel S. Brass
Rachel S. Brass By: Attorney for Defendant Apple Inc. 

Gibson, Dunn & Crutcher LLP

#### Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)

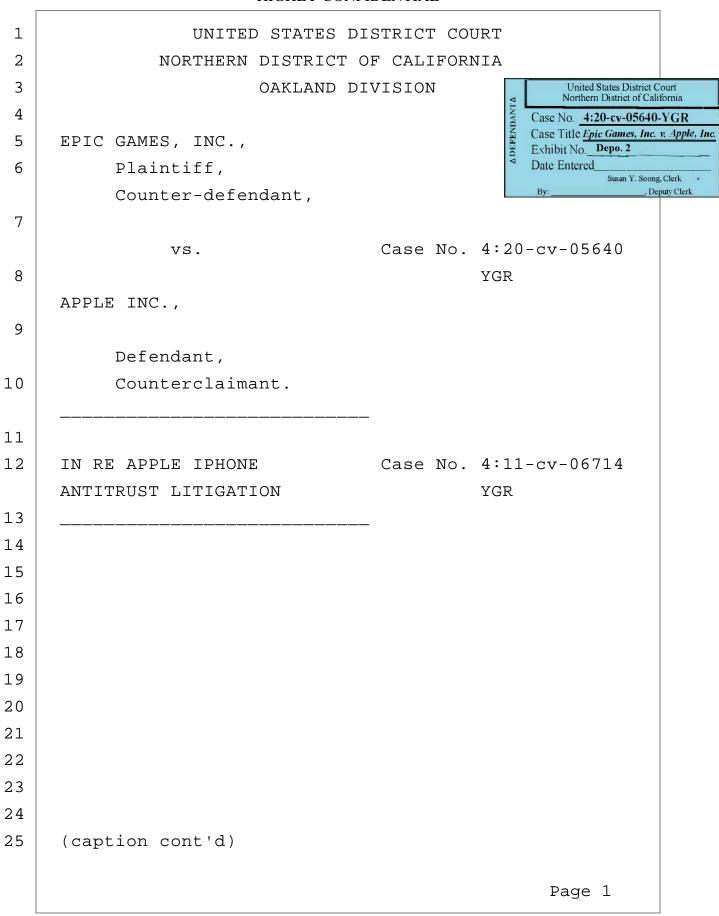
# Deposition Designation of Joe Kreiner (February 5, 2021)

#### Time

Apple Inc.'s Designations	Epic Games, Inc.'s Designations		
(Yellow Highlight)	(Blue Highlight)		
1 hour 13 minutes 25 seconds	5 minutes 44 seconds		

ΓΔ	United States District Court Northern District of California
ADEFENDANTA	Case No. 4:20-cv-05640-YGR Case Title <i>Epic Games, Inc. v. Apple, Inc.</i> Exhibit No. Depo. 2 Date Entered
	Susan Y. Soong, Clerk •
	By: Deputy Clerk

## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 4 of 184 HIGHLY CONFIDENTIAL



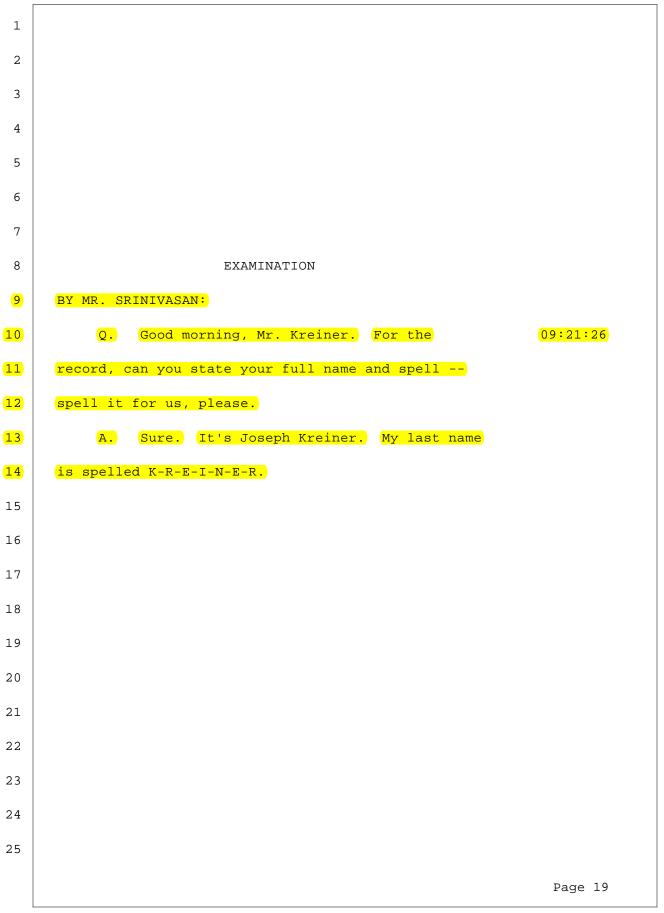
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 5 of 184 HIGHLY CONFIDENTIAL

1	DONALD R. CAMERON, et al.,
2	Plaintiffs,
3	vs. Case No. 4:19-cv-03074
	YGR
4	APPLE INC.,
5	Defendant.
6	
7	
8	
9	**HIGHLY CONFIDENTIAL**
10	ZOOM DEPOSITION OF JOE KREINER & EPIC GAMES, INC'S
11	30(b)(6) CORPORATE REPRESENTATIVE
12	(Reported Remotely via Video & Web Videoconference)
13	Raleigh, North Carolina (Deponent's location)
14	Friday, February 5, 2021
15	Volume I
16	
17	
18	
19	
20	
	STENOGRAPHICALLY REPORTED BY:
21	REBECCA L. ROMANO, RPR, CSR, CCR
	California CSR No. 12546
22	Nevada CCR No. 827
	Oregon CSR No. 20-0466
23	Washington CCR No. 3491
24	JOB NO. 4450721
25	PAGES 1 - 297
	D 0
	Page 2

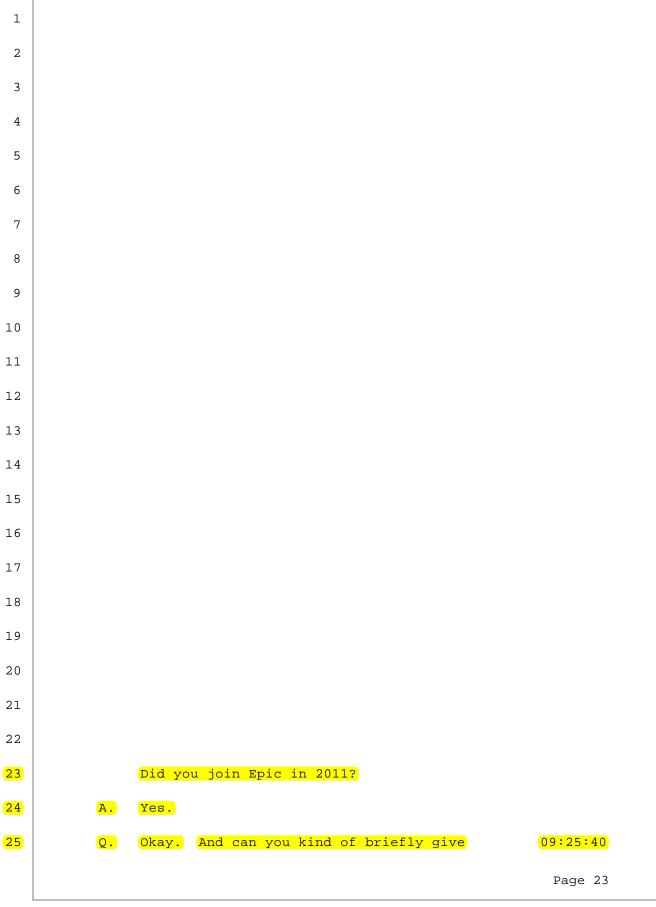
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 6 of 184 HIGHLY CONFIDENTIAL

```
1
 2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
               THE COURT REPORTER: If you could raise
17
      your right hand for me, please.
18
19
               THE DEPONENT: (Complies.)
               THE COURT REPORTER: You do solemnly 12:22:22
20
21
      state, under penalty of perjury, that the testimony
      you are about to give in this deposition shall be
22
23
      the truth, the whole truth and nothing but the
24
     truth?
25
               THE DEPONENT: I do.
                                                              12:22:22
                                                                Page 18
```

## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 7 of 184 HIGHLY CONFIDENTIAL



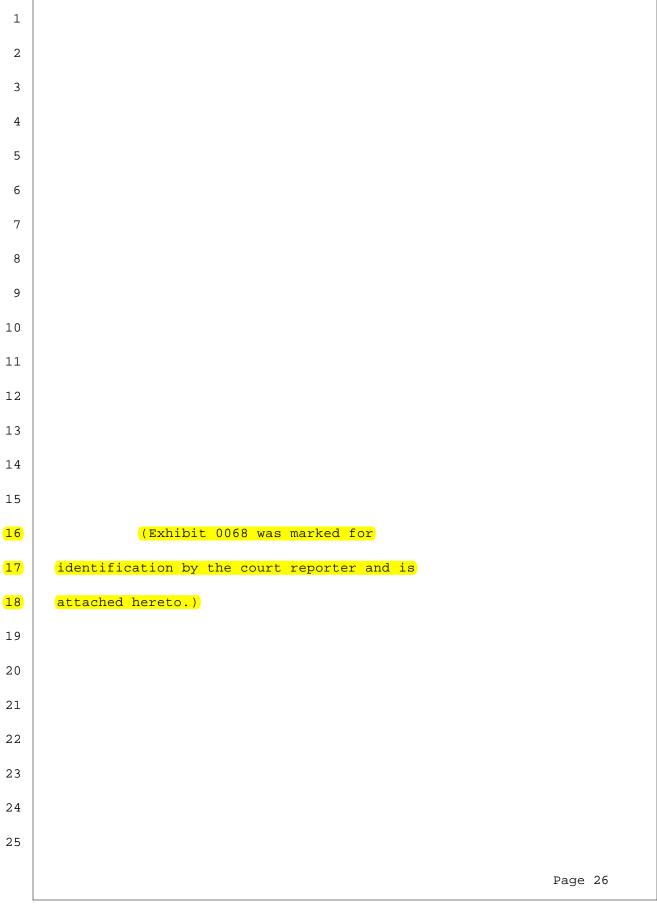
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 8 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 9 of 184 HIGHLY CONFIDENTIAL

1	us an overview of what you did when you started at	09:25:43
2	Epic, what roles you had, and building up to the	
3	role you currently have?	
4	A. Sure. I joined Epic in 2011 as business	
5	development for Unreal Engine. Over time my	09:25:55
6	current role is vice president of business develop.	
7	That includes business development for the	
8	Epic Games Store, business development for Epic	
9	Online Services, and managing first-party relations	
10	with Sony, Microsoft, and Nintendo.	09:26:15
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 24

## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 10 of 184 HIGHLY CONFIDENTIAL



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 11 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
 7
          Q. Okay. And, Mr. Kreiner, we can -- I'm
 8
      just going to ask you a question. And if you need
9
10
      to look at it more -- the document more, you can do 09:31:58
11
      that.
12
               Have you seen this document before?
13
          A. I don't believe so.
14
          Q. Okay. So this is a notice that Apple
15
      served on your company, Epic, asking for testimony 09:32:09
16
      on behalf of the company on several topics. So I'm
17
      just going to ask you about a subset of these.
18
      There are 40 topics -- 43 topics, actually. And
19
      you're -- through your counsel, we understood that
20
      there are about a half dozen that you are -- have 09:32:32
21
      been designated for.
22
               So maybe -- let me just direct you to the
23
      ones that are relevant to you, and you can let me
24
      know that you're ready -- hopefully, that you are
25
      prepared to testify about them.
                                                              09:32:46
                                                               Page 27
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 12 of 184 HIGHLY CONFIDENTIAL

1	So if you can turn to page 6, the first	09:32:48
2	number on page 6 is 8. And I'll just read that.	
3	"Distribution (whether online, through)	
4	brick-and-mortar stores, or through online stores	
5	such as Amazon.com) of each of your apps, web apps,	09:33:05
6	in-app products, and software, the commissions,	
7	fees, costs, and expenses paid in connection with	
8	each such distribution channel, and the margins and	
9	net profits received by you relative to prices	
10	charged."	09:33:22
11	We understood, Mr. Kreiner, that you	
12	would be testifying on this topic with respect to	
13	consoles and gift cards. Are you prepared to do	
14	that?	
<mark>15</mark>	A. Yes.	09:33:33
16	Q. Okay. And then No. 10 I'm just going	
17	to cover all of them so we can take care of this at	
18	once.	
19	Topic No. 10 rather than read it out	
20	loud, maybe for the sake of efficiency here, if you	09:33:43
21	take a look at No. 10, are you prepared to testify	
22	about No. 10?	
23	A. Yes.	
24		
25		
		Page 28

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 13 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
 7
 8
          Q. (By Mr. Srinivasan) So is that -- so
9
10
      with that clarification in mind, Mr. Kreiner, are 09:34:18
      you ready to testify about 10 through 13?
11
12
          A. Yes.
13
          Q. Okay. And if you can flip to or scroll
14
      down to -- the next topic is on page 9, which is
15
      Topic 28, which is "Agreements or contracts
                                                            09:34:36
16
      relating to providing or directing your apps, web
17
      apps, in-app products, software, or app
18
      marketplace, including any relating to distribution
19
      on an exclusive basis."
20
               And, again, I understand that you were 09:34:53
21
      designated for this topic with respect to consoles?
22
          A. Yes.
          Q. And then if you can scroll to the next
23
24
      one, No. 32, Topic 32, again restricted to
      consoles. Is that something you're ready to
25
                                                           09:35:10
                                                              Page 29
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 14 of 184 HIGHLY CONFIDENTIAL

1	testify about?	09:35:12
2	A. Yes.	
3	Q. And one last one on the next page,	
4	Topic 40, Epic's "effort to bundle its digital	
5	products, app, web apps, software, in-app products	09:35:26
6	with any hardware devices," is that something that	
7	you are ready to to testify about today?	
8	A. Yes. That's correct.	
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 30

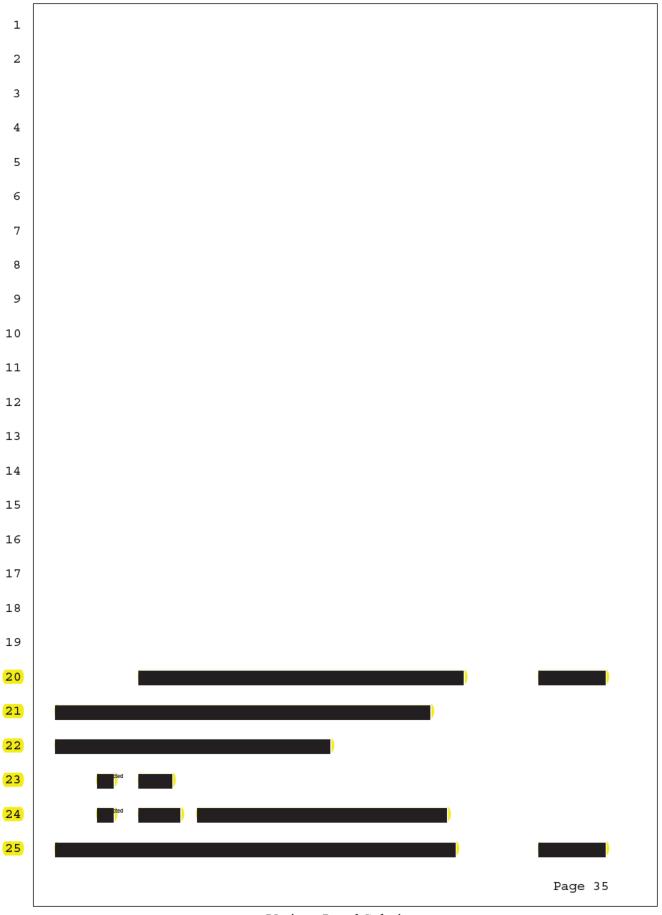
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 15 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
7
          Q. (By Mr. Srinivasan) So, Mr. Kreiner,
      take a look at Exhibit 71 if you would. And let me
 8
9
      know when you've had a chance to skim it.
               For the record, Exhibit 71 was produced 09:38:35
10
      by Epic bearing Bates number 1983020 through
11
12
      1983026. It is a document dated May 31st, 2017,
13
      with the title "Exclusivity and Comarketing
14
      Agreement for 'Fortnite' on PlayStation 4."
15
               Mr. Kreiner, this is a letter agreement 09:39:05
16
      addressed to you.
17
               Do you recall this agreement?
          A. Yes.
18
19
               MR. CLARKE: Jay, can I just clarify. I
20
      think this is Exhibit 69. You might have misspoken 09:39:13
21
      and said 71.
               MR. SRINIVASAN: Okay. Thank you for
22
      that. Yes, it is Exhibit 69. And thanks for that
23
24
     clarification.
          Q. (By Mr. Srinivasan) And so, Mr. Kreiner, 09:39:23
25
                                                              Page 32
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 16 of 184 HIGHLY CONFIDENTIAL

1	was this	an agr	eement	between	Epic	and	Sony		09:39:	25
2	regardin	g distr	ibution	of For	tnite	on				
3	PlayStat	ion 4?								
4	(A.)	That'	s corre	ct.						
5										
6										
7										
8										
9										
LO										
L1										
L2										
L3										
L4										
L5										
L6										
L7										
L8										
L9										
20										
21										
22										
23										
24										
25										
-									D = ===	2.2
									Page	33

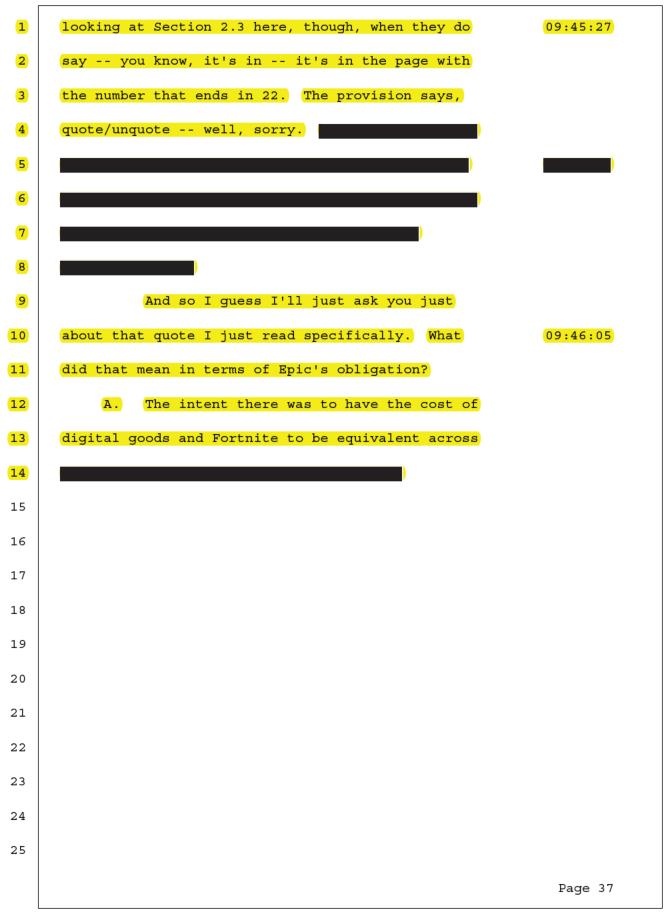
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 17 of 184 HIGHLY CONFIDENTIAL



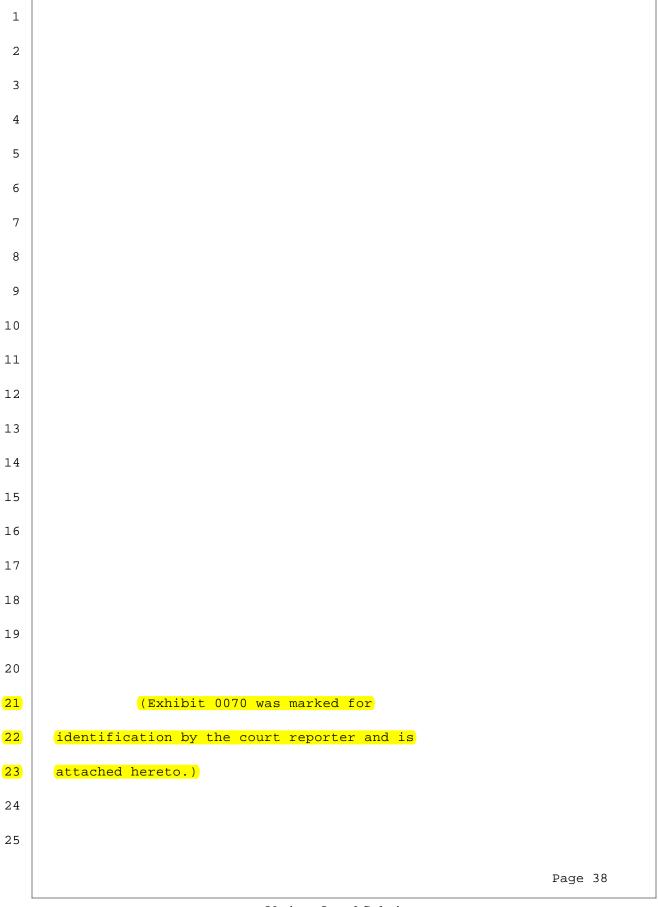
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 18 of 184 HIGHLY CONFIDENTIAL



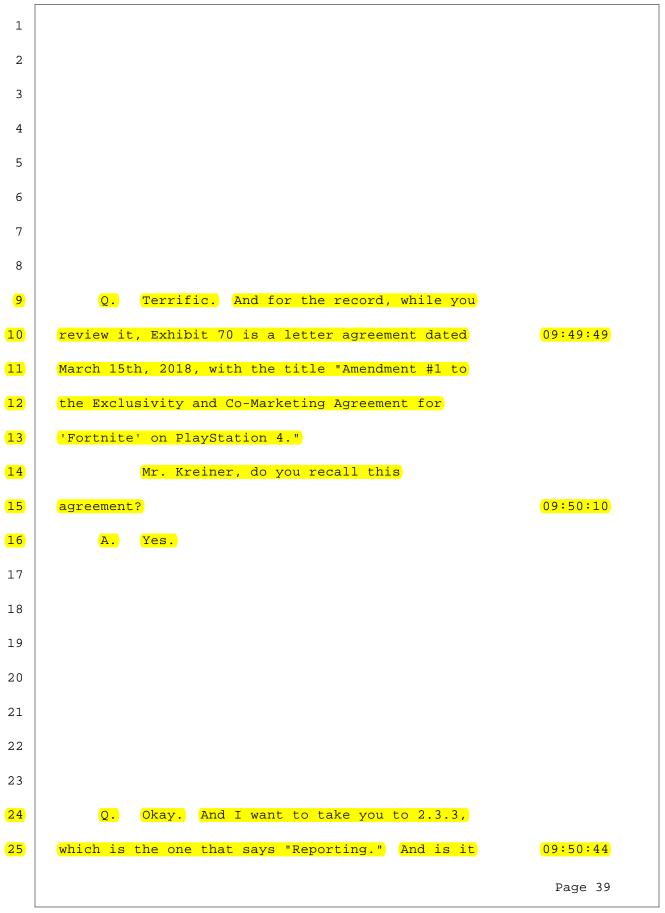
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 19 of 184 HIGHLY CONFIDENTIAL



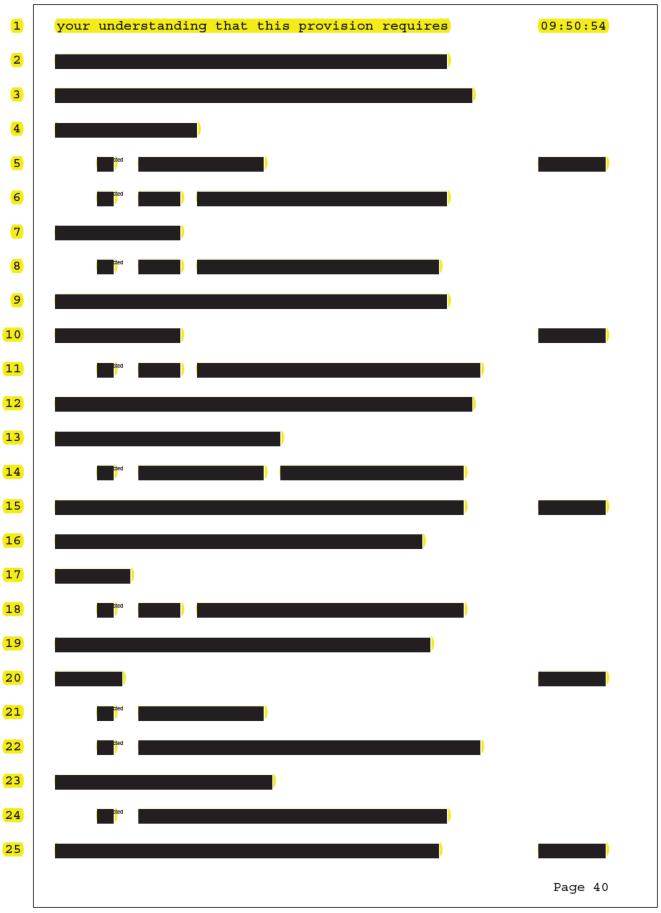
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 20 of 184 HIGHLY CONFIDENTIAL



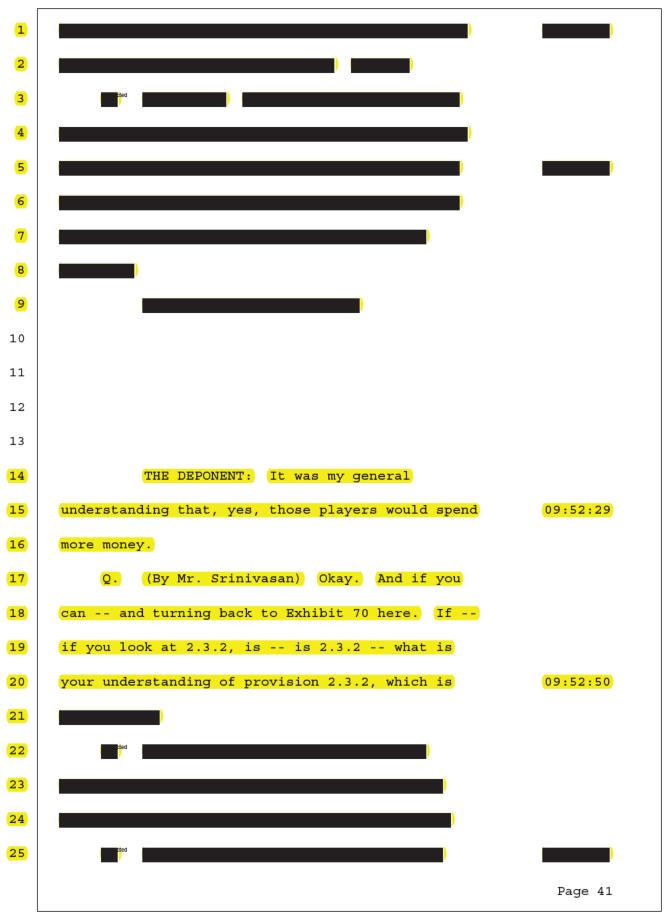
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 21 of 184 HIGHLY CONFIDENTIAL



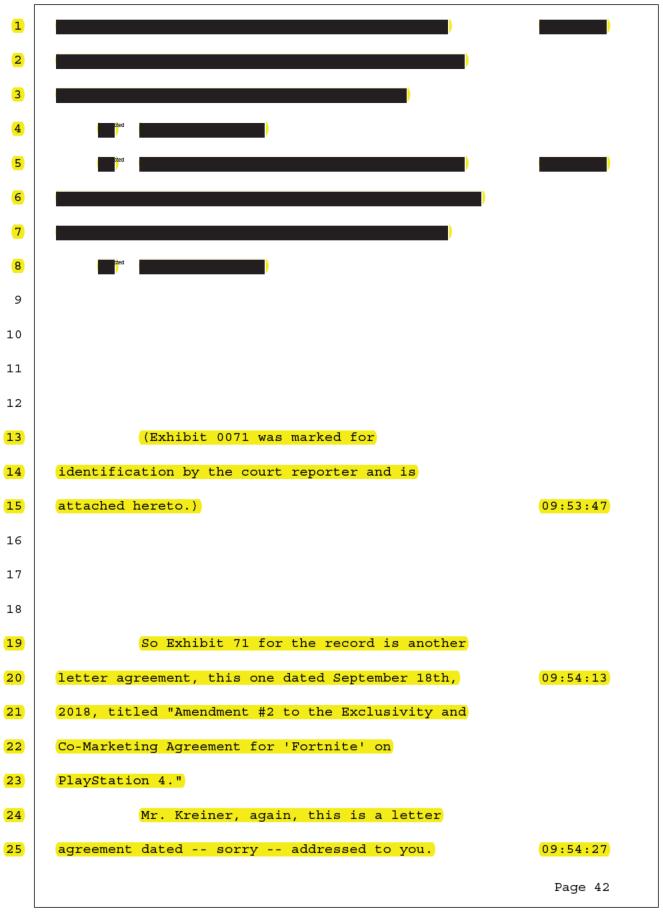
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 22 of 184 HIGHLY CONFIDENTIAL



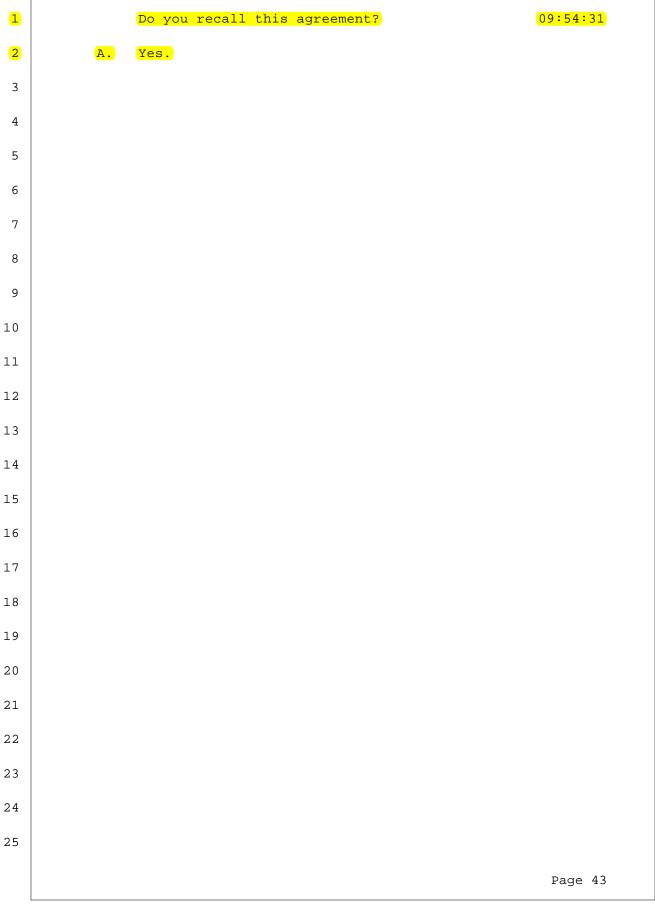
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 23 of 184 HIGHLY CONFIDENTIAL



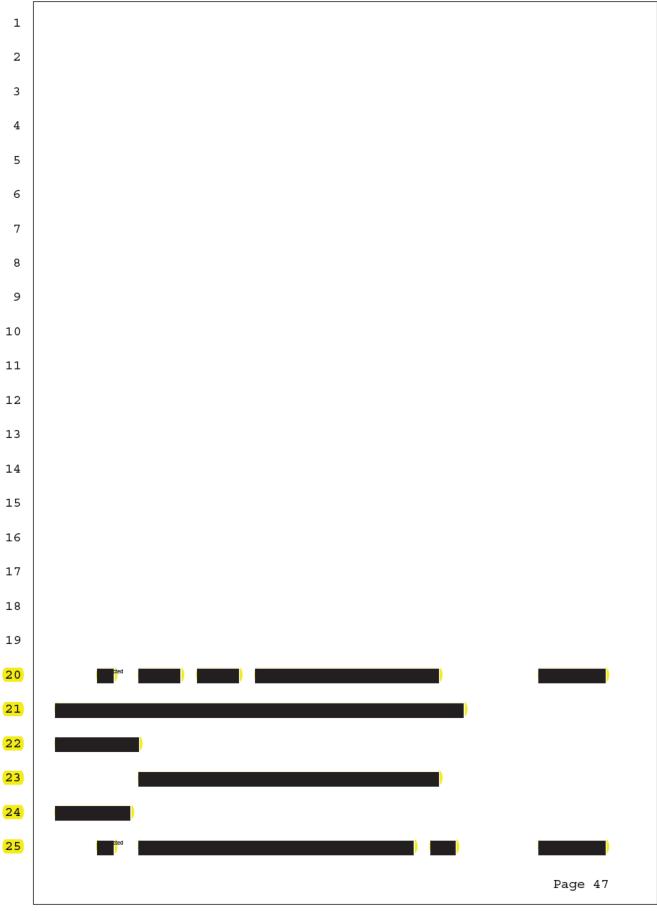
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 24 of 184 HIGHLY CONFIDENTIAL



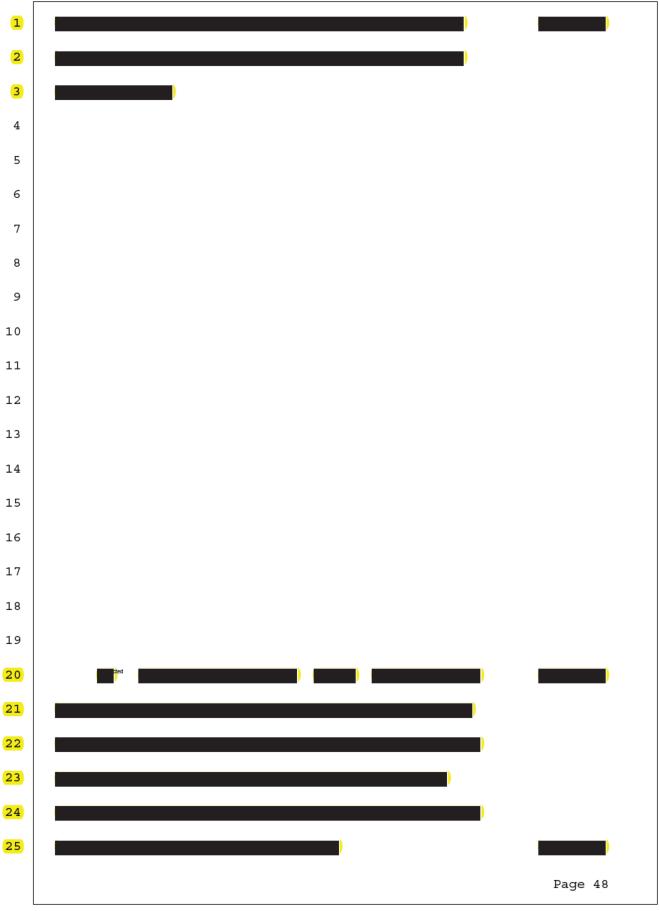
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 25 of 184 HIGHLY CONFIDENTIAL



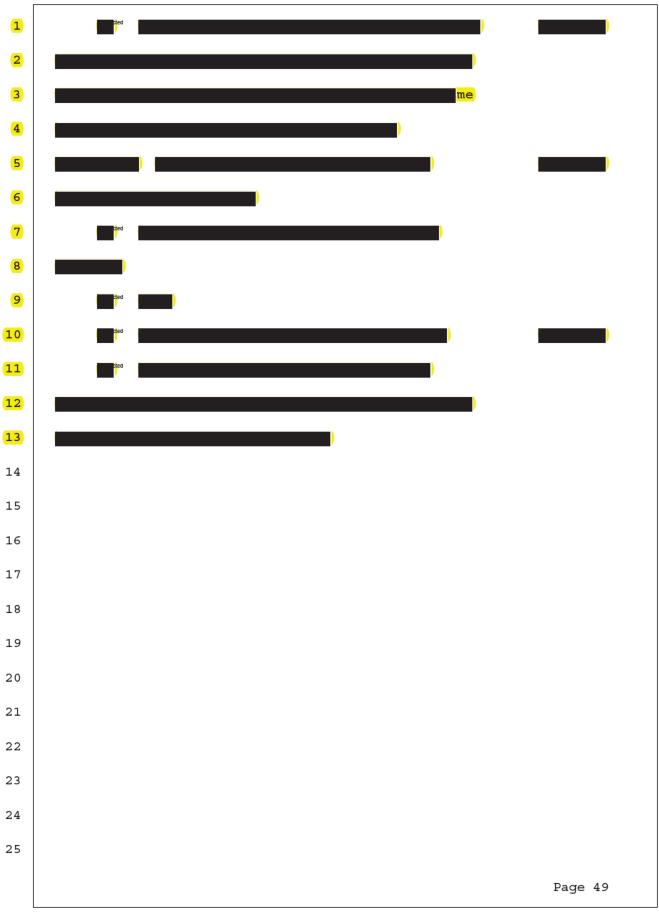
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 26 of 184 HIGHLY CONFIDENTIAL



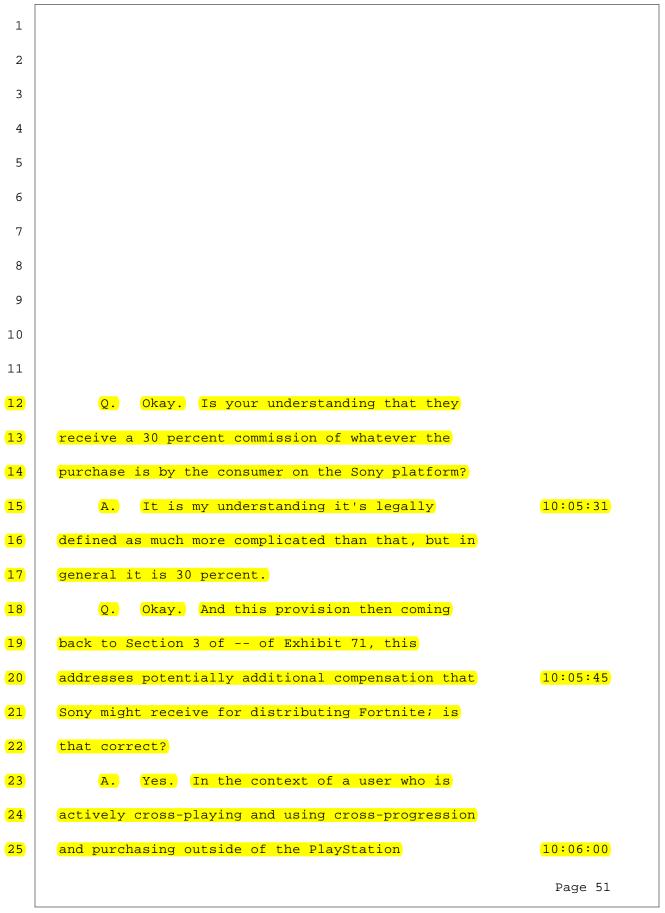
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 27 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 28 of 184 HIGHLY CONFIDENTIAL



### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 29 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 30 of 184 HIGHLY CONFIDENTIAL

7		10:06:04
1	ecosystem, we were agreeing to compensate Sony.	10:06:04
2	Q. Okay. So in addition to the 30 percent	
3	commission, Sony potentially could receive even	
4	more compensation from Epic for distributing	
5	Fortnite?	10:06:19
6	A. Correct.	
7	Q. And it sounds like to me and let me	
8	know if you can answer this question that there	
9	was a set of conditions that had to occur in order	
10	for this additional compensation to trigger. [Is	10:06:27
11	that fair?	
12	A. That's yes, that's fair.	
13	Q. And can you describe generally how this	
14	worked? what does conditions were?	
<mark>15</mark>	A. It was a fairly complicated calculation,	10:06:39
<mark>16</mark>	but the net effect was, if a primary PlayStation	
17	user shifted their purchasing activity to another	
18	platform, we would compensate PlayStation for	
19	for that.	
20		
21		
22		
23	Q. Okay. And do you have an understanding	
24	of how frequently that occurred?	
25	A. I believe we were required to pay this	10:07:14
		Page 52

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 31 of 184 HIGHLY CONFIDENTIAL

1	quarterly, and if I remember correctly, it happened	10:07:17
2	maybe three or four times.	
3	Q. Okay. Three or four times since the	
4	inception of this agreement in I should say	
5	three or four quarters since the inception of this	10:07:29
6	agreement in September 2018?	
7	A. Yes. Subsequent agreements loosened the	
8	payment responsibilities and, my understanding,	
9	ceased to pay Sony at some point.	
10	Q. Okay. And do you know how much that	10:07:46
11	additional compensation was at at any of those	
12	quarters?	
13	A. Yeah. It was relatively small. Maybe a	
14	million to 3 or 4 million per quarter.	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 53

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 32 of 184 HIGHLY CONFIDENTIAL

```
1
 2
               (Exhibit 0072 was marked for
      identification by the court reporter and is
 3
      attached hereto.)
 4
 5
 6
 7
 8
 9
10
11
12
13
           Q. (By Mr. Srinivasan) So, for the record,
      Exhibit 72 is a PowerPoint deck titled
14
15
      "Cross-Platform Policy Requirements and Process,"
10:09:43
16
      August of 2019. And this -- Mr. Kreiner, I'll just
17
      represent that this came from your files.
               And so, first of all, do you -- do you
18
19
      recognize this deck?
20
          A. I remember receiving it, yeah.
                                                              10:10:02
21
22
23
24
25
                                                                Page 54
```

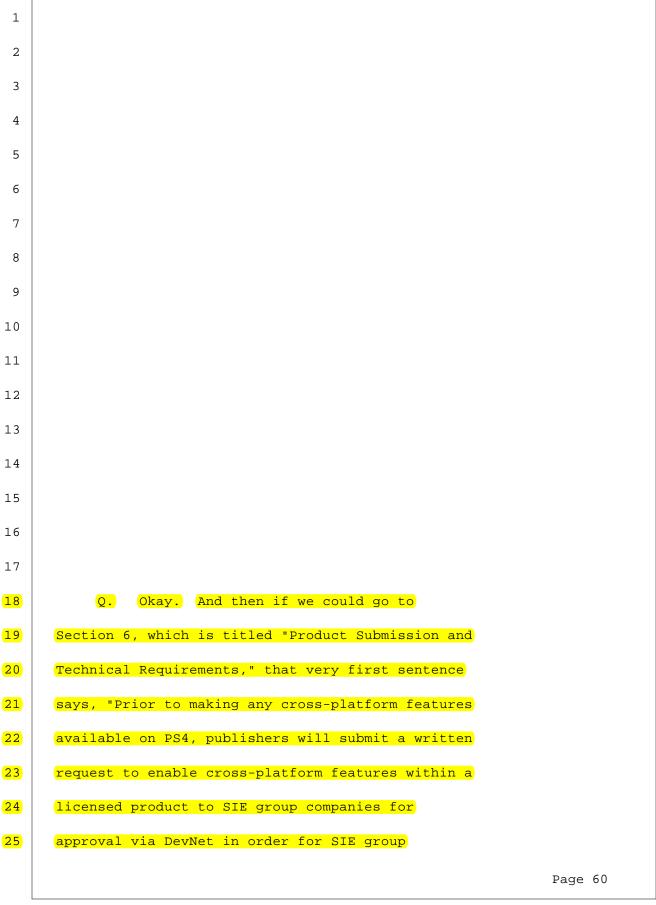
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 33 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6		
7	(Exhibit 0073 was marked for	
8	identification by the court reporter and is	
9	attached hereto.)	
10	MR. SRINIVASAN: And for the record,	10:13:25
11	while you review that, Mr. Kreiner, Exhibit 73 is	
12	a an agreement that is titled "PlayStation 4"	
13	Cross-Platform Policy Schedule to the PlayStation	
14	Global Developer and Publisher Agreement."	
<mark>15</mark>	And it bears Bates number ending in 141,	10:13:44
16	goes through Bates number ending in 149, and is	
17	signed by Joe Babcock for Epic and Phillip	
18	Rosenberg for Sony.	
19	Q. (By Mr. Srinivasan) Mr. Kreiner, do you	
20	recall this agreement?	10:14:07
21	A. Yes.	
22	Q. Okay. And what is your understanding of	
23	what this agreement the what is your	
24	understanding of the purpose of this agreement?	
25	A. Yeah, this agreement is Sony PlayStation	(10:14:19)
		Page 57

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 34 of 184 HIGHLY CONFIDENTIAL

1	refining the requirements around supporting	10:14:23
2	cross-play. And, you know, cross-play was a new	
3	a new feature. And those previous letters were	
4	kind of the first of its kind for Sony. This is a	
5	more formal agreement that's meant to go out to a	10:14:40
6	wider developer base than just Epic.	
7	Q. Got it.	
8	And do you recall when this agreement was	
9	executed?	
10	(A.) (Offhand, no.)	10:15:08
11	Q. I'm sorry. I'll just direct you to it.	
12	It says in the third line there that it's effective	
13	as of September 2019.	
14	Does that roughly comport with your	
15	understanding?	10:15:18
16	(A.) (Yes.)	
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 58

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 35 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 36 of 184 HIGHLY CONFIDENTIAL

1	companies to ensure the licensed product complies	
2	with the technical requirements set forth in	
3	Exhibit 1."	
4	Did I read that right, sir?	
5	A. Yes. This is a requirement from the	10:18:44
6	previous PowerPoint, yeah.	
7	Q. And this requirement essentially requires	
8	Epic to first receive permission from Sony before	
9	enabling some new aspect of cross-platform play; is	
10	that right?	10:19:01
11	A. Yes.	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 61

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 37 of 184 HIGHLY CONFIDENTIAL

1		
2		
3	Q. Okay. And do you know why Xbox wasn't	
4	included in the original agreement that authorized	
5	cross-platform play with a PC?	10:19:54
6	A. Sony was very concerned about giving Xbox	
7	a competitive edge by allowing it.	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 62
		2

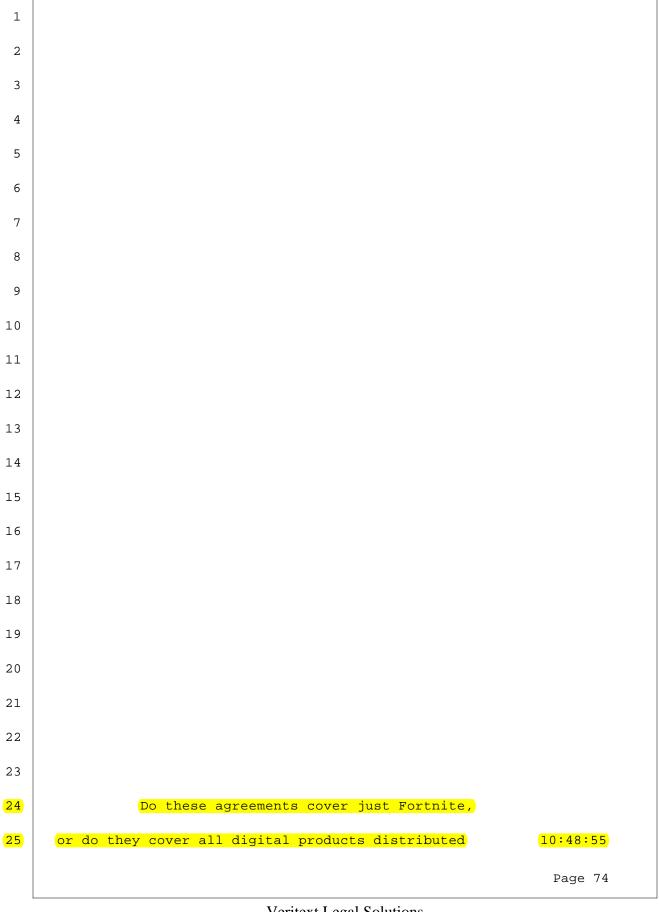
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 38 of 184 HIGHLY CONFIDENTIAL

```
1
 2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
          Q. (By Mr. Srinivasan) Okay. Great. Let's
     look at the next exhibit, which will be 74.
20
                                                           10:22:07
               (Exhibit 0074 was marked for
21
22
     identification by the court reporter and is
23
     attached hereto.)
          Q. (By Mr. Srinivasan) I don't think it's
24
25
     up yet. Okay. 74 should be up.
                                                            10:22:26
                                                              Page 63
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 39 of 184 HIGHLY CONFIDENTIAL

1	And while you're taking a look at that,	10:22:33
2	Mr. Kreiner, for the record, Exhibit 74 is an	
3	agreement entitled "PlayStation Global Developer &	
4	Publisher Agreement." And it spans several pages	
5	that starts with Bates number ending in 810 and	10:22:56
6	going through Bates number ending in 856.	
7	And, Mr. Kreiner, do you recall seeing	
8	this agreement before?	
9	A. Yes, I've seen this before.	
10	Q. And is this agreement which is it okay	10:22:10
		(10.23.19)
11	if I call this the the well, it's the global	
12	developer and publisher agreement. Is that how you	
13	refer to it as?	
14	A. Yes, abbreviated as the GDPA.	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 64
		1490 04

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 40 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 41 of 184 HIGHLY CONFIDENTIAL

1	by Epic on the PlayStation?	10:48:59
2		
3	THE DEPONENT: The GDPA is a generic	
4	document that would cover all submitted games by	
5	Epic. The letters that we've been looking at were	10:49:11
6	specific to Fortnite.	
7	Q. (By Mr. Srinivasan) Okay. Thank you.	
8	And let's focus on let's focus on	
9	Fortnite. So if I understand it correctly, Epic is	
10	paying a 30 percent commission, sometimes maybe a	10:49:26
11	little bit more, to distribute Fortnite on	
12	PlayStation. Is that accurate?	
13	A. That would be accurate, yes.	
14	Q. Okay. And that Epic is subject to	
<mark>15</mark>	complying with Sony's guidelines under the GDPA to	10:49:42
16	be able to distribute its products on PlayStation.	
17	Is that accurate?	
18	A. Yes.	
19	Q. Okay. And that Epic is required to	
20	distribute its products through the PSN, the	10:49:58
21	PlayStation Network, to reach Sony's users on	
22	PlayStation.) Is that accurate?	
23	A. Yes.	
24	Q. And I didn't ask you this question	
25	before, but does Epic have an opportunity to recoup	10:50:15
		Page 75

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 42 of 184 HIGHLY CONFIDENTIAL

1	payment for its products on the PlayStation Network	(10:50:19)
2	through its own means, or is it required to do it	
3	through Sony?	
4	A. We use the Sony-provided payment flow.	
5	Q. Okay. And is Epic required to use the	10:50:32
6	Sony-provided payment flow to distribute its	
7	products on PlayStation?	
8	A. That's my understanding.	
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 76

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 43 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6	Q. (By Mr. Srinivasan) Okay. And are you	
7	required is Epic required to provide certain	
8	in-game content that's not available to other	
9	platforms?	
10	THE DEPONENT: That's correct. We	10:52:12
11	provide quarterly in-game drops that are available	
12	to PS Plus members.	
13	Q. (By Mr. Srinivasan) And PS Plus members,	
14	<pre>only, correct?</pre>	
<b>15</b>	A. Correct.	10:52:23
<mark>16</mark>	Q. And then as far as cross-platform play,	
17	to the extent that Epic would like to broaden that	
18	to additional platforms, you are required to get	
19	Sony's permission to do so, correct?	
20	A. Via DevNet, correct.	10:52:36
21	Q. What does that mean, via DevNet? if you	
22	can explain that, please.	
23	A. Sony has a support forum that's available	
24	to anyone that is a publisher on the PlayStation	
25	platform. It's a forum they use to respond to	(10:52:51)
		Page 77

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 44 of 184 HIGHLY CONFIDENTIAL

1	support questions.	10:52:54
2	Q. Okay. And then as far as pricing, Sony	
3	requires Epic to price Fortnite, any content	
4	associated with Fortnite, at a price no higher than	
5	that what it's pricing at other platforms, correct?	10:53:06
6	A. Correct.	
7		
8		
9		
10		
11		
12		
13		
14	(Exhibit 0077 was marked for	
<u>15</u>	identification by the court reporter and is	10:53:32
16	attached hereto.)	
17	MR. SRINIVASAN: And while you take a	
18	look at that, for the record Exhibit 77 is an	
19	assignment and assumption agreement dated	
20	June 28th, 2018. It is has the first page as	10:54:06
21	the Bates number ending in 632 and goes all the way	
22	to the page with Bates number ending in 662.	
23	Q. (By Mr. Srinivasan) Mr. Kreiner, do you	
24	recognize this agreement?	
25	A. I recognize the agreement that's attached	10:54:34
		Page 78

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 45 of 184 HIGHLY CONFIDENTIAL

```
1
      to Exhibit A.
                                                               10:54:36
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
          Q. (By Mr. Srinivasan) Okay. As you noted,
21
      Mr. Kreiner, let's go to -- I guess it's the
22
23
      Exhibit A to this agreement, which starts on page
24
      number ending in 637. And this part of the
25
      agreement, which is -- well, I'll say it for the 10:56:16
                                                                 Page 79
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 46 of 184 HIGHLY CONFIDENTIAL

1	record.) It's titled "Nintendo Switch Content	10:56:17
2	License and Distribution Agreement."	
3	Do you recognize this agreement?	
4	A. Yes.	
5		
6		
7		
8		
9	Q. And do you understand this agreement as	
10	the one that governs Epic's distribution of its	10:56:41
<u>11</u>	games on the Nintendo Switch platform?	
12	A. Yes.	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 80

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 47 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
          Q. Okay. Okay. So turning to the Exhibit A
7
      agreement itself. If we can go to Section 3.6.
               And 3.6 is entitled "Guidelines." And
 8
      I'll just quote that first sentence. It says,
9
10
      "Content provider will ensure that the content and 10:58:34
11
      marketing material comply with all the
12
      guidelines -- with all the guidelines applicable to
13
      the respective items."
14
               Do you see that?
          A. Yes.
                                                             10:58:51
15
16
          Q. And do you understand that to mean that
17
      Epic is required to comply with Nintendo's
      guidelines to -- in order to abide by the
18
19
      agreement?
20
          A. Yes.
                                                             10:59:02
21
          Q. Let's scroll down to 3.9. 3.9 is
22
      entitled "Currency," and it says, "Content provider
      will ensure that the content does not permit the
23
24
      end user to obtain currency within the content,
      including but not limited to, for the purpose of 10:59:21
25
                                                               Page 81
```

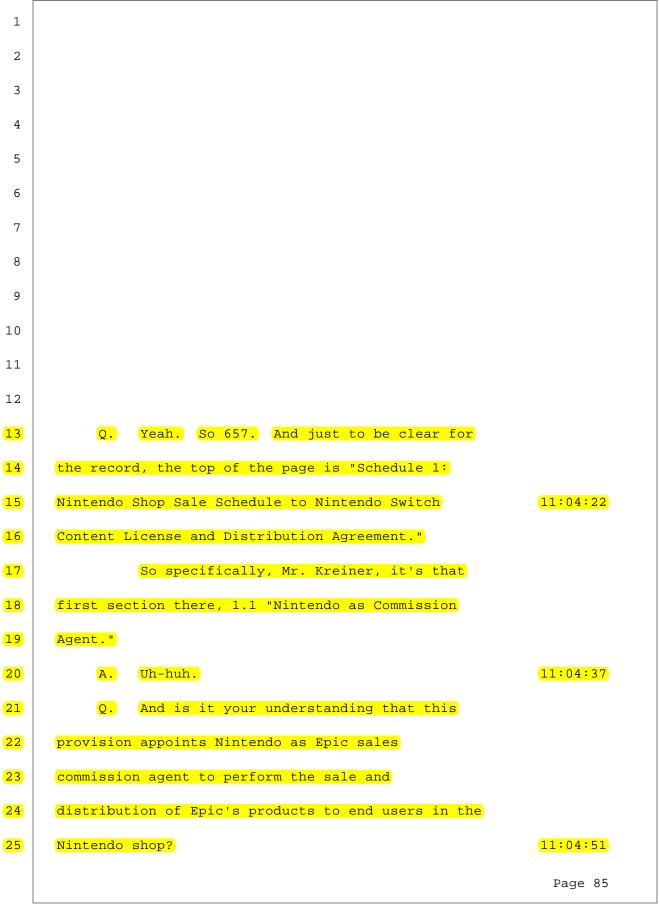
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 48 of 184 HIGHLY CONFIDENTIAL

1	gifting, exchange, redemption, transfer, use as a	10:59:25
2	premium, or purchasing anything whether within or	
3	outside of the content for the Nintendo network."	
4	Do you see that?	
5	A. Yes.	10:59:38
6	Q. And do you know what that provision is	
7	is meant to address?	
8	A. It essentially is making the wallet for	
9	the Switch platform to be isolated from any other	
10	platform.	10:59:57
11	Q. I see. So any V-Bucks bought on the	
12	Nintendo platform would not be usable if the player	
13	is using a different platform later? Is that fair?	
14	A. Yeah, that's fair, but this also is a	
<mark>15</mark>	little bit more broad. And, for instance, it	(11:00:13)
16	mentions gifting. And later Nintendo has given us	
17	an exception to allow gifting inside of Fortnite.	
18	And, additionally, we have permission	
19	from them to have cross-progressions. So anything	
20	purchased on the Nintendo Switch platform inside of	11:00:38
21	a user's account would transfer if they logged in	
22	from another platform.	
23	Q. Okay. And that's that's about, like,	
24	if they buy a dance or an outfit, if they bought it	
25	on a Nintendo platform and they were playing on a	11:00:52
		Page 82

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 49 of 184 HIGHLY CONFIDENTIAL

different platform, they would have access to those things; is that right?  A. Correct.  Q. But if they purchased a certain amount of V-Bucks and had a V-Bucks balance on the Nintendo platform and then played on a different platform, that balance would not be accessible to them; is that right?  A. In effect, yes. Q. Okay, And that's still true today?  11:01:11 A. It is. Q. So just so I understand it, the cross-progression aspect is is allowed on Nintendo, but the cross-wallet is not. Is that correct? A. That's correct. Q. Okay, If we can look at 3.10, just below there, and that says "Submission of the Content." Is it your understanding that this provision requires Epic to submit its content to Nintendo in advance for approval? A. Yes, in effect.			
A. Correct.  Q. But if they purchased a certain amount of  V-Bucks and had a V-Bucks balance on the Nintendo  [1:01:01]  [5] V-Bucks and had a V-Bucks balance on the Nintendo  [6] platform and then played on a different platform,  [7] that balance would not be accessible to them; is  [8] that right?  [9] A. In effect, yes,  [0] Okay. And that's still true today?  [1:01:11]  [1] A. It is.  [2] O. So just so I understand it, the  [3] Cross-progression aspect is is allowed on  [4] Nintendo, but the cross-wallet is not. Is that  [5] correct?  [1] 1:01:24  [6] A. That's correct.  [7] O. Okay. If we can look at 3.10, just below  [8] there, and that says "Submission of the Content."  [9] Is it your understanding that this  [9] provision requires Epic to submit its content to  [10] Nintendo in advance for approval?  [2] A. Yes, in effect.  [3]	1	different platform, they would have access to those	11:00:54
Q. But if they purchased a certain amount of V-Bucks and had a V-Bucks balance on the Nintendo Dateform and then played on a different platform, that balance would not be accessible to them; is that right? A. In effect, yes. Q. Okay. And that's still true today? 11:01:11 A. It is. Q. So just so I understand it, the cross-progression aspect is is allowed on Nintendo, but the cross-wallet is not. Is that correct? A. That's correct. Q. Okay. If we can look at 3.10, just below there, and that says "Submission of the Content." Is it your understanding that this provision requires Epic to submit its content to Nintendo in advance for approval? A. Yes, in effect.	2	things; is that right?	
V-Bucks and had a V-Bucks balance on the Nintendo   11:01:01	3	A. Correct.	
platform and then played on a different platform, that balance would not be accessible to them; is that right?  A. In effect, yes.  O. Okay. And that's still true today? Il:01:11  A. It is.  O. So just so I understand it, the cross-progression aspect is is allowed on Nintendo, but the cross-wallet is not. Is that  correct? Il:01:24  A. That's correct.  O. Okay. If we can look at 3.10, just below there, and that says "Submission of the Content." Is it your understanding that this provision requires Epic to submit its content to Il:01:38 Nintendo in advance for approval?  A. Yes, in effect.	4	Q. But if they purchased a certain amount of	
that balance would not be accessible to them; is  that right?  A. In effect, yes.  O. Okay. And that's still true today? [11:01:11]  A. It is.  O. So just so I understand it, the  cross-progression aspect is is allowed on  Nintendo, but the cross-wallet is not. Is that  correct? [11:01:24]  A. That's correct.  O. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to [11:01:38]  Nintendo in advance for approval?  A. Yes, in effect.	5	V-Bucks and had a V-Bucks balance on the Nintendo	11:01:01
8 that right? 9 A. In effect, yes. 10 Q. Okay. And that's still true today? (1:01:11) 11 A. It is. 12 Q. So just so I understand it, the 13 cross-progression aspect is is allowed on 14 Nintendo, but the cross-wallet is not. (Is that) 15 correct? (1:01:24) 16 A. That's correct. 17 Q. Okay. (If we can look at 3.10, just below) 18 there, and that says "Submission of the Content." 19 Is it your understanding that this 20 provision requires Epic to submit its content to (1:01:38) 21 Nintendo in advance for approval? 22 A. Yes, in effect.	6	platform and then played on a different platform,	
9 A. In effect, yes.  10 Q. Okay. And that's still true today? 11:01:11  11 A. It is.  12 Q. So just so I understand it, the  13 cross-progression aspect is is allowed on  14 Nintendo, but the cross-wallet is not. Is that  15 correct? 11:01:24  16 A. That's correct.  Q. Okay. If we can look at 3.10, just below  18 there, and that says "Submission of the Content."  19 Is it your understanding that this  20 provision requires Epic to submit its content to 11:01:38  Nintendo in advance for approval?  A. Yes, in effect.	7	that balance would not be accessible to them; is	
Q. Okay. And that's still true today?  A. It is.  Q. So just so I understand it, the  cross-progression aspect is is allowed on  Nintendo, but the cross-wallet is not. Is that  correct?  A. That's correct.  Q. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	8	that right?	
11 A. It is.  12 Q. So just so I understand it, the  13 cross-progression aspect is is allowed on  14 Nintendo, but the cross-wallet is not. Is that  15 correct?  11:01:24  16 A. That's correct.  17 Q. Okay. If we can look at 3.10, just below  18 there, and that says "Submission of the Content."  19 Is it your understanding that this  20 provision requires Epic to submit its content to  11:01:38  21 Nintendo in advance for approval?  22 A. Yes, in effect.  23  24  25	9	A. In effect, yes.	
Q. So just so I understand it, the  cross-progression aspect is is allowed on  Nintendo, but the cross-wallet is not. Is that  correct?  A. That's correct.  Q. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	10	Q. Okay. And that's still true today?	11:01:11
Cross-progression aspect is is allowed on  Nintendo, but the cross-wallet is not. Is that  correct?  A. That's correct.  Q. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	11	A. It is.	
Nintendo, but the cross-wallet is not. Is that  correct?  11:01:24  A. That's correct.  Q. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	12	Q. So just so I understand it, the	
Correct?  A. That's correct.  Q. Okay. If we can look at 3.10, just below there, and that says "Submission of the Content."  Is it your understanding that this provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	13	cross-progression aspect is is allowed on	
A. That's correct.  Q. Okay. If we can look at 3.10, just below  there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	14	Nintendo, but the cross-wallet is not. (Is that	
Q. Okay. If we can look at 3.10, just below there, and that says "Submission of the Content."  Is it your understanding that this provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	<mark>15</mark>	correct?	11:01:24
there, and that says "Submission of the Content."  Is it your understanding that this  provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	<mark>16</mark>	A. That's correct.	
19 Is it your understanding that this  20 provision requires Epic to submit its content to  21 Nintendo in advance for approval?  22 A. Yes, in effect.  23  24  25	17	Q. Okay. If we can look at 3.10, just below	
provision requires Epic to submit its content to  Nintendo in advance for approval?  A. Yes, in effect.	18	there, and that says "Submission of the Content."	
Nintendo in advance for approval?  A. Yes, in effect.	19	Is it your understanding that this	
22 A. Yes, in effect.  23  24  25	20	provision requires Epic to submit its content to	11:01:38
23 24 25	21	Nintendo in advance for approval?	
24 25	22	A. Yes, in effect.	
25	23		
	24		
Page 83	25		
			Page 83

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 50 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 51 of 184 HIGHLY CONFIDENTIAL

1	A. So rather lengthy paragraph, but that	(11:04:53)
2	appears to be correct.	
3	Q. And so the idea here, then, is that Epic	
4	sells its products on the Nintendo platform solely	
5	through this means described in 1.1, correct?	11:05:06
6	A. Correct.	
7	Q. If we then can go to Exhibit B to this	
8	document which is on the page it's the very last	
9	page of the document, actually, 662.	
10	And right about a quarter of the way	11:05:29
11	down, there's a heading that says, "Exhibit B to	
12	Schedule 1: Commission."	
13	And I'll just read it. It says,	
14	"30 percent of the amount Nintendo entity actually	
<u>15</u>	received for each sale from end users, net of any	11:05:41
16	transaction taxes."	
17	And is it your understanding that	
18	Nintendo requires Epic to pay a commission of	
19	30 percent of the amount received from each sale	
20	from end users to Nintendo?	11:05:56
21	A. That's correct.	
22		
23		
24		
25		
		Page 86

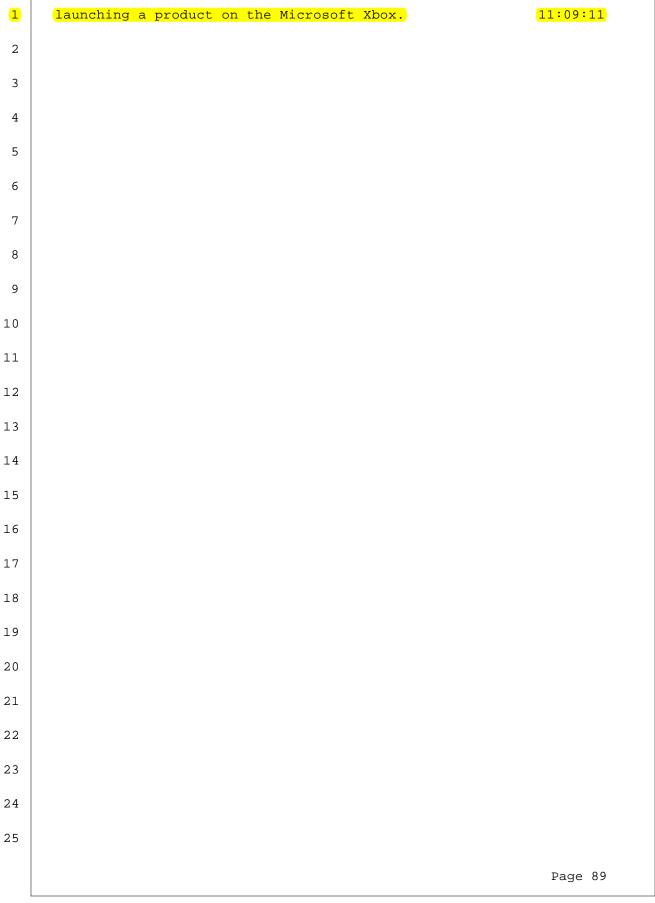
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 52 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6	Q. Okay. Great. And unlike Sony, you guys	
7	kept it simple with Nintendo. So this is the only	
8	Nintendo document.	
9	Just so I understand it, Nintendo	
10	requires Epic to pay 30 percent commission on sales	11:06:39
11	of its products, correct?	
12	A. Correct.	
13	Q. And Nintendo requires Epic to follow its	
<mark>14</mark> )	guidelines and that its following its guidelines is	
<mark>15</mark>	a requirement for Epic to continue to distribute on	11:06:55
<mark>16</mark>	<pre>Nintendo's platform, correct?</pre>	
<mark>17</mark>	A. That's correct.	
18	Q. And that Nintendo also requires Epic to	
<mark>19</mark>	go through Nintendo to to process the payment,	
20	correct?	11:07:08
21	A. Correct.	
22		
23		
24		
25		
		Page 87

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 53 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4	(Exhibit 0078 was marked for	
5	identification by the court reporter and is	(11:07:43)
6	attached hereto.)	
7		
8		
9		
10	Q. (By Mr. Srinivasan) So Exhibit 78 is up,	(11:08:20)
11	Mr. Kreiner, if you want to take a look at that.	
12	A. Okay.	
13	Q. Exhibit 78, for the record, is a document	
14	entitled "Independent Developers Publishing Program	
<mark>15</mark>	on Xbox One Title Licensing Agreement."	(11:08:35)
<mark>16</mark>	And it looks to be dated in May of 2017	
17	between Microsoft and Epic Games, and it starts	
18	with page Bates number ending in 372 and goes to	
19	page with the Bates number ending in 383.	
20	And, Mr. Kreiner, do you recognize this	(11:09:00)
21	document?	
22	A. Yes.	
23	Q. Okay. How would you describe what is	
24	this document?	
25	A. This is the distribution agreement for	(11:09:09)
		Page 88

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 54 of 184 HIGHLY CONFIDENTIAL



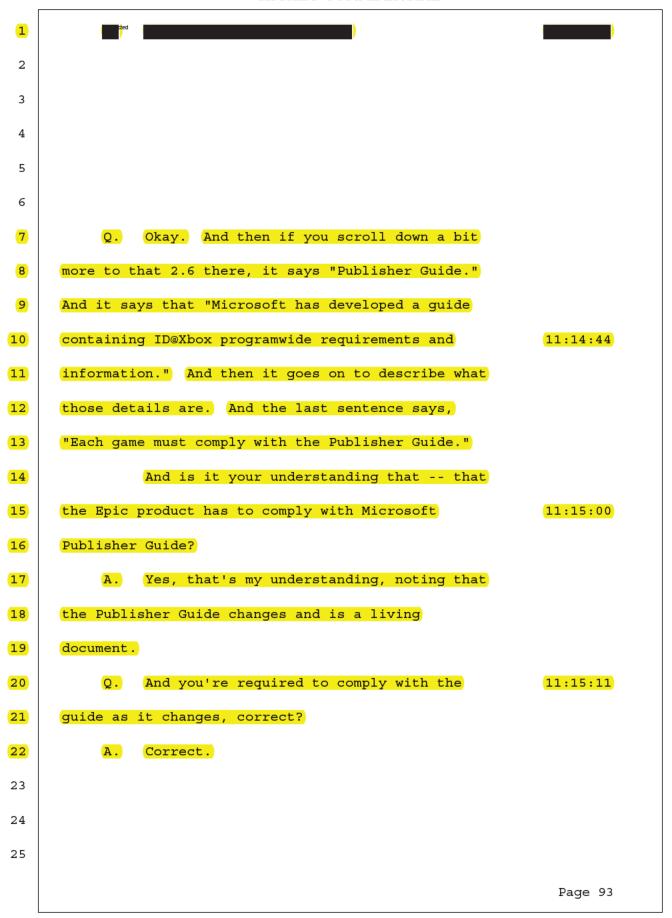
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 55 of 184 HIGHLY CONFIDENTIAL

1	Q. Okay. And, as far as this agreement, is	11:11:29
2	it still in force? By "this," I mean the	
3	Exhibit 78 we're looking at here.	
4	A. Yes, that's my understanding.	
5	Q. Okay. And is Epic distributing other	(11:11:41)
6	titles on Xbox One right now?	
7	A. I don't believe so.	
8	Q. Okay. Okay. So if we can go to	
9	Section 2 of this agreement. It's titled "Game	
10	Approval, Certification and Release."	11:11:59
11	And do you understand that Section 2	
12	generally requires Epic to go through an approval	
13	process for Microsoft before the game can be	
14	distributed on the Xbox platform?	
<mark>15</mark>	A. Yes, that's correct.	11:12:15
16	Q. And it looks like Epic must actually	
17	receive a certification before it can distribute on	
18	the Xbox platform?	
19	A. That's correct.	
20		
21		
22		
23		
24		
25		
		Page 91

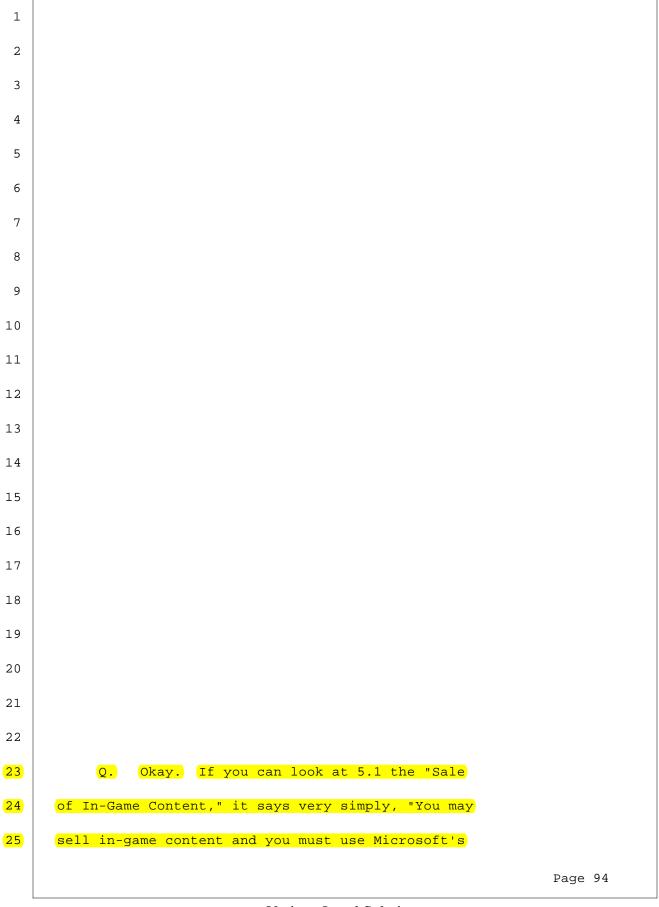
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 56 of 184 HIGHLY CONFIDENTIAL



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 57 of 184 HIGHLY CONFIDENTIAL



### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 58 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 59 of 184 HIGHLY CONFIDENTIAL

1	commerce engine. All purchases made through your	
2	game are subject to the terms of this TLA and the	
3	Xbox Games Store policies."	
4	Do you see that?	
5	A. Yes.	11:17:07
6	Q. By that do you understand that Microsoft	
7	requires Epic to use Microsoft's mechanism to sell	
8	its any aspect of its content on the Xbox	
9	platform?	
10	A. That's correct.	11:17:18
11	Q. And then lastly, if we scroll down to	
12	Section 8.1. And 8.1 is broadly titled "Royalty	
13	Fee, " and there's there's, you know, some	
14	language in there.	
<mark>15</mark>	But is the upshot of this that Microsoft	11:17:40
16	requires Epic to pay a 30 percent royalty or	
17	30 percent commission for distributing its products	
18	on the Xbox?	
19	A. It's safe to summarize all of this as	
20	that, yes.	11:17:53
21		
22		
23		
24		
25		
		Page 95

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 60 of 184 HIGHLY CONFIDENTIAL

1	(Exhibit 0079 was marked for	11:18:05
2	identification by the court reporter and is	
3	attached hereto.)	
4	MR. SRINIVASAN: Okay. Sorry. It's	
<mark>5</mark>	loading a little slower.	11:18:29
6	Q. (By Mr. Srinivasan) Exhibit 79 is a	
7	document entitled "Independent Developers	
8	Publishing Program on Xbox One, Title Licensing	
9	Agreement, Amendment 1."	
10	And, sir, do you recognize this document?	11:18:43
11	A. Yes.	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22	Q. Okay. And, again, just so I understand,	
23	then, in terms of Epic's distribution of Fortnite	
24	on the Xbox platform, Microsoft requires Epic to	
25	undergo an approval process, correct?	11:19:33
		Page 96

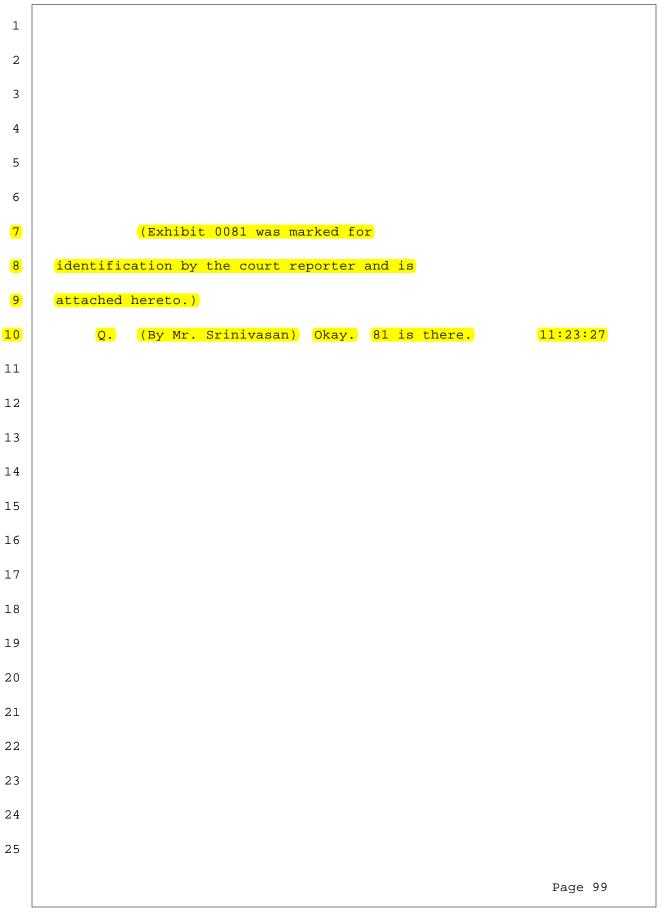
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 61 of 184 HIGHLY CONFIDENTIAL

1	(A.) (Yes.)	(11:19:36)
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13	Q. Okay. And that Microsoft reserves the	
14	right to disable or remove any game or other	
<mark>15</mark>	content of Epic's if Epic breaches the TLA or	11:20:23
<mark>16</mark>	otherwise deviates from the guidelines, correct?	
17	A. And doesn't cure it, yes.	
18	Q. Okay. And that to sell in-game content,	
19	Microsoft requires Epic to use Microsoft's commerce	
20	<pre>engine, correct?</pre>	11:20:42
21	A. That's correct.	
22	Q. And I think I may have asked this at the	
23	beginning and I apologize, but just in case	
24	that Microsoft requires Epic to pay a 30 percent	
25	royalty or commission on all sales regarding its	11:20:50
		Page 97

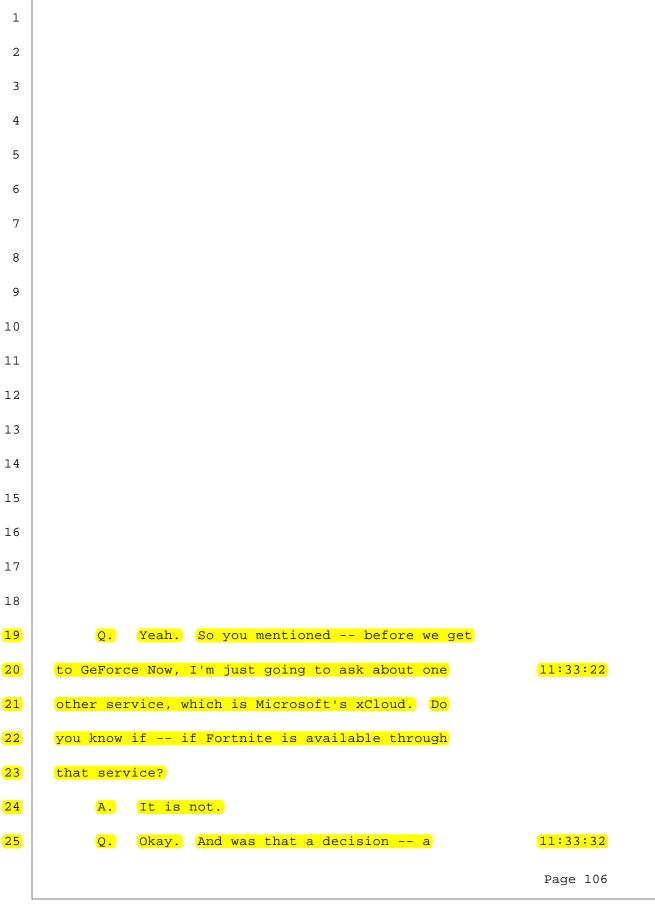
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 62 of 184 HIGHLY CONFIDENTIAL

1	games, right?	11:20:53
2	A. The legal language is a little bit more	
3	complicated; but, yes, in fact, it is a 30 percent	
4	royalty.	
5		
6		
7		
8		
9		
LO		
L1		
L2		
L3		
L 4		
L5		
L6		
L7		
L8		
L9		
20		
21		
22		
23		
24		
25		
-		Dog
		Page 98

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 63 of 184 HIGHLY CONFIDENTIAL



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 64 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 65 of 184 HIGHLY CONFIDENTIAL

1	deliberate decision made by Epic not to offer it on	11:33:34
2	that service?	
3	A. Yes.	
4	Q. And what was the basis for that decision?	
<mark>5</mark>	A. We viewed Microsoft's efforts with	(11:33:44)
6	xCloud to be competitive with our PC offerings.	
7		
8		
9		
10		
11		
12		
13		
14		
<mark>15</mark>	Q. And can you can you explain what you	11:34:16
16	mean when you say that the Microsoft xCloud	
17	service competes with Epic's PC offering?	
18	A. Yeah. So the way xCloud works is, when	
19	you submit the Xbox version of a game to Microsoft,	
20	if if you allow Microsoft to include your game	(11:34:35)
21	in the service, any any PC player would be able	
22	to also play the game and only transact inside of	
23	the Microsoft ecosystem.	
24	So using Microsoft's commerce engine in	
25	the game would be offering Fortnite playable on PC	11:34:55
		Page 107

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 66 of 184 HIGHLY CONFIDENTIAL

1	but with Microsoft's in-game payment system.	11:34:58
2	Q. I see. So if they were playing on the	
3	Microsoft if a user was playing on the Microsoft	
4	xCloud service and to the extent that they made	
5	any purchases, the Epic would have to pay a	11:35:08
6	30 percent commission on those to Microsoft?	
7	A. Yeah. Well, Microsoft would withhold	
8	that 30 percent, yes.	
9	Q. Understood. Whereas if it was, of	
10	course, played directly on the Epic Games via PC,	11:35:22
11	you're not paying a commission to anybody, right?	
12	A. Correct.	
13	Q. Okay. Now, you mentioned GeForce Now.	
14	Can you describe what GeForce Now is?	
<mark>15</mark>	A. Yes. It it operates as a cloud gaming	11:35:35
16	PC rental service. So a player subscribes to	
17	GeForce Now. They get access to a high-end gaming	
18	PC that exists in in a cloud environment, and	
19	then can log into their existing digital	
20	storefronts like like Steam or the Epic Games	(11:35:59)
21	Store.	
22		
23		
24		
25		
		Page 108

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 67 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4	Q. And what GeForce Now by the way, do	
5	you know who what company distributes GeForce	11:36:31
6	Now?	
7	A. It's Nvidia.	
8	Q. So Nvidia essentially, you would	
9	you would log in with your low-performance machine;	
10	but, through the cloud, you would essentially be	11:36:43
11	you would have access to a high-performance machine	
12	to play your games. Is that the idea?	
13	A. Yes. That's my understanding.	
14	Q. Okay. And I think you mentioned that	
<u>15</u>	Fortnite is available on GeForce Now. Is that	11:36:56
16	did I get that right?	
<u>17</u>	A. That's correct in that a user using that	
18	service has access to their library of games on	
19	multiple storefronts.	
20		
21		
22		
23		
24		
25		
		Page 109

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 68 of 184 HIGHLY CONFIDENTIAL

1		
2	Q. Okay. And did did you partner with	
3	somebody to do the actual physical distribution?	
4	A. Yes. We partnered with multiple	
5	companies to do physical distribution.	(11:43:02)
6	Q. And what were the names of those	
7	companies?	
8	A. It would have been Gearbox for physical	
9	Fortnite, and Warner Bros. for the more recent	
10	physical offerings that are code in a box.	11:43:15
11	Q. Got it. And we'll break those apart. So	
12	Gearbox was the only company that actually	
13	distributed the game on disk for you?	
14	A. That's correct.	
15	Q. Okay. And did did you pay a	11:43:27
16	commission, or how else or did you otherwise	
17	compensate Gearbox for that?	
18	A. Yes.	
19	Q. And what was it a commission?	
20	A. Yes.	11:43:39
21	Q. And do you recall what that commission	
22	amount was?	
23	A. I don't remember the precise financial	
24	calculation for that.	
25	Q. Okay. Was it more than 30 percent? Do	11:43:49
		Page 114

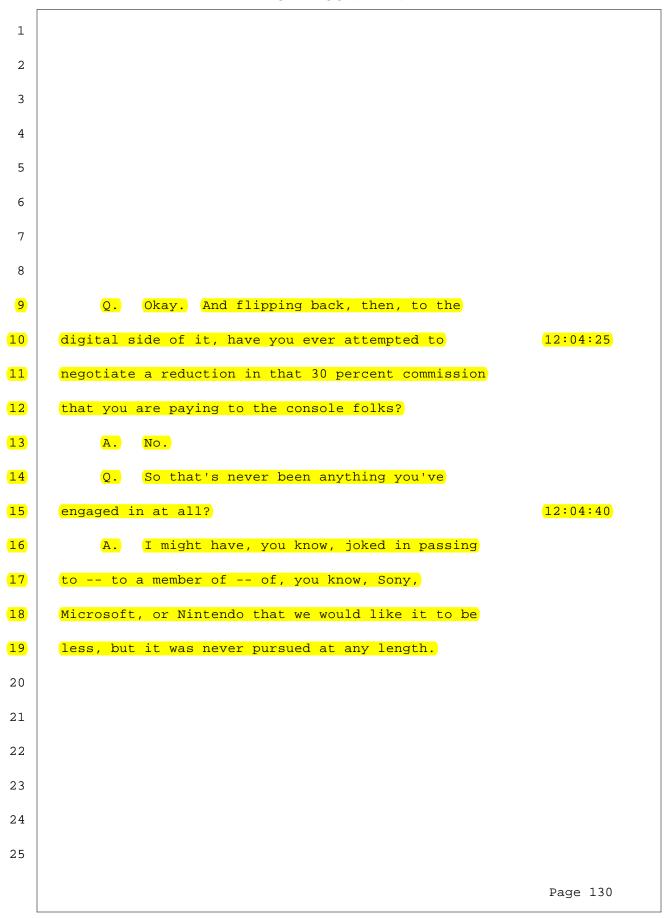
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 69 of 184 HIGHLY CONFIDENTIAL

1	you know?	11:43:53
2	A. Not directly to Gearbox, but if you would	
3	include the entirety of the way physical	
4	distribution occurs, it is money that goes to the	
5	retailers. There's money that goes to distributors	11:44:06
6	such as Gearbox. And then the first parties also	
7	get a cut. So the net effect, it would have been	
8	more than 30 percent.	
9		
10		
11		
12	Can you explain the process of physical	
13	distribution and what the various parties in the	
14	chain are?	
15	A. Sure. So and and this is minorly	(11:44:35)
16	well, it's different per platform. But, in	
17	general, the way this works is, for a physical	
18	disk, the first party or in the case of the	
<mark>19</mark>	Nintendo Switch, the cartridge the first party	
20	requires those to be created at one of their	(11:44:54)
21	locations. And they typically take a fixed	
22	per-disk fee that that is charged and collects,	
23	at which then gearbox pays that fee in in this	
24	particular case in on behalf of Epic and passes	
25	the cost through to us.	11:45:18
		Page 115

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 70 of 184 HIGHLY CONFIDENTIAL

1	And then Gearbox arranges with the the	11:45:20
2	retailers to purchase the disks at a wholesale	
3	price. The retailers mark it up and make a profit	
4	off of that.	
<u>(5)</u>	Q. Okay. And is the way Epic is	11:45:33
6	compensated, is it related to the retail price	
7	that's ultimately set by the retailer? Is there	
8	how does Epic get compensated for a physical	
9	product?	
10	A. It would be the wholesale price minus the	11:45:51
11	platform fee minus the Gearbox fee.	
12	Q. Okay. And do you have a sense of what	
13	like an estimate of what the percentage would be	
14	that Epic would receive compared to what the retail	
15	price would be?	11:46:09
16	A. I'd have to look to to the financial	
17	reporting that we received from Gearbox to to	
18	give you an accurate estimation of of the	
19	what the actual net percentage was. But it's it	
20	would be more than 30 percent.	11:46:26
21	Q. Okay. Meaning more than 30 percent that	
22	Epic is giving to somebody else meaning you	
23	would be getting less than 70 percent of the retail	
24	value?	
25	A. Correct.	11:46:41
		Page 116

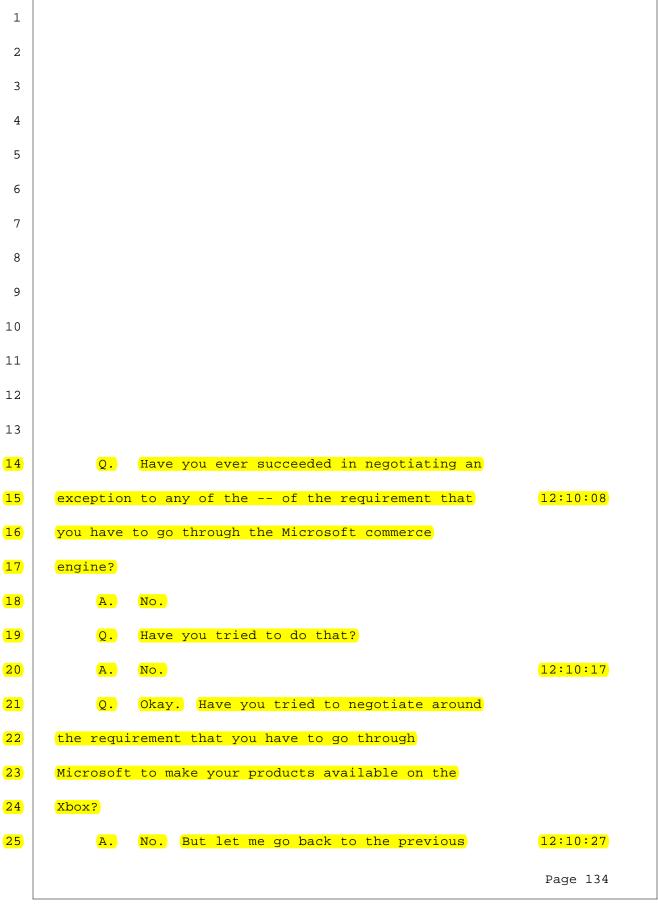
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 71 of 184 HIGHLY CONFIDENTIAL



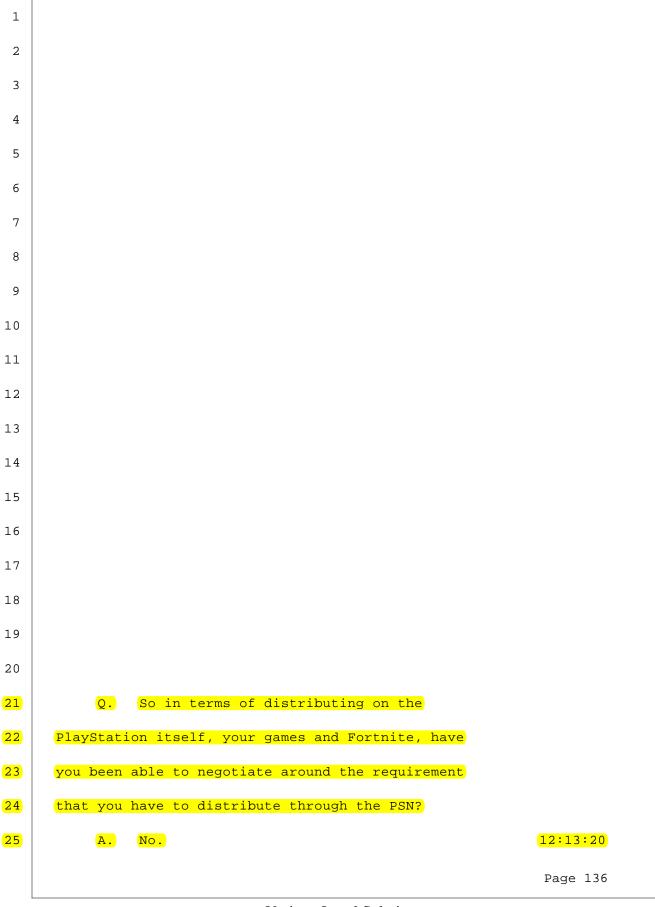
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 72 of 184 HIGHLY CONFIDENTIAL

1		
2	Q. Okay. And what is it that they do for	
3	you that you feel like 30 percent is a fair number?	
4	A. In particular those three platforms, we	
5	have weekly marketing meetings with them to discuss	12:05:38
6	merchandising Fortnite in the best way possible.	
7	We are a significant revenue generator	
8	for all three of those platforms, probably in the	
9	top five, you know, revenue sources for them. So	
10	they have a vested interest in promoting Fortnite.	12:05:56
11	We receive significant store placement	
12	that we do not have to pay for. We do pay for	
13	some, but we receive significant free placement.	
14	The marketing teams between Epic and the	
15	first parties coordinates events and social media.	12:06:14
16	So we see that as an ongoing relationship	
17	that is driving value for Epic.	
18		
19		
20		
21		
22		
23		
24		
25		
		Page 131

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 73 of 184 HIGHLY CONFIDENTIAL



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 74 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 75 of 184 HIGHLY CONFIDENTIAL

1	Q. And have you been able to negotiate	12:13:21
2	around the requirement that the payment is	
3	processed from Sony?	
4	A. No, we've not engaged in those	
5	conversations.	12:13:30
<u>6</u>	Q. Okay. Have you taken the position, by	
7	the way, with Sony in these discussions that the	
8	payment processing aspect of it is a separate	
9	product?	
10	A. Can you repeat the question.	12:13:42
11	Q. Yeah.	
12	In in in thinking about the payment	
13	processing function, for instance, that was	
14	dictated in the Sony agreement, have you ever taken	
15	the position with Sony that it's a separate product	12:13:51
16	to which Epic that Epic should not be required	(12.13.31)
17	to, quote/unquote, be subject to?	
18		
19	THE DEPONENT: It's not my understanding	
20	that we have made.	12:14:02
21	Q. (By Mr. Srinivasan) Okay. What about	
22	for Microsoft?	
23	A. No.	
24	Q. Or for Nintendo?	
25	A. With Nintendo, there have been	12:14:10
		Page 137

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 76 of 184 HIGHLY CONFIDENTIAL

1	discussions about a direct Epic payment method, but	12:14:12
2	they're very early discussions and haven't really	
3	gone anywhere.	
4		
5		
6		
7	Q. Okay. And with Nintendo did you take the	
8	position that requiring Epic to use the Nintendo	
9	payment system was tantamount to requiring Epic to	
10	take on a separate product?	12:14:34
11		
12		
13	Q. (By Mr. Srinivasan) Yeah. Did you	
14	describe payment processing as a separate product	
<mark>15</mark>	that Nintendo was forcing you to buy?	12:14:42
16	A. No.	
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 138

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 77 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
 7
 8
               So I want to go to Exhibit 80, and that
9
      was the one that was too small to read. So I think 01:07:28
10
11
      the -- there we go. It's going -- it's going to
      get shared on the screen. And so hopefully you can
12
13
      see it. It's still pretty small.
14
15
16
17
18
19
20
21
22
23
24
               And, Mr. Kreiner, have -- this relates to
25
      the issue of the -- the terms of the various
                                                             01:08:37
                                                               Page 139
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 78 of 184 HIGHLY CONFIDENTIAL

1	agreements that Apple excuse me that Epic	01:08:40
2	has. And I know you're here just for the consoles.	
3	So my question to you, sir, is, first of all, have	
4	you seen this chart before?	
5	A. Not at any length, no.	01:08:56
6		
7		
8		
9		
10	Q. And right next to it there's a next	01:09:07
11	column right over that says "Platform Fee	
12	Percentage."	
13	Do you see that?	
14	A. Yes.	
<mark>15</mark>	Q. And would you agree with me that, for	01:09:15
16	Microsoft, Sony, and Nintendo, which are the first	
<u>17</u>	three listed there, their the percentage is	
18	30 percent?	
19	A. That's correct.	
20	Q. And that's consistent with what your	01:09:28
21	testimony was earlier this morning, correct?	
22	A.) That's correct.	
23	Q. Okay. And, by the way, it goes on and	
24	I should scroll down because there's a few more	
25	games for listed also. That first three entries	01:09:42
		Page 140

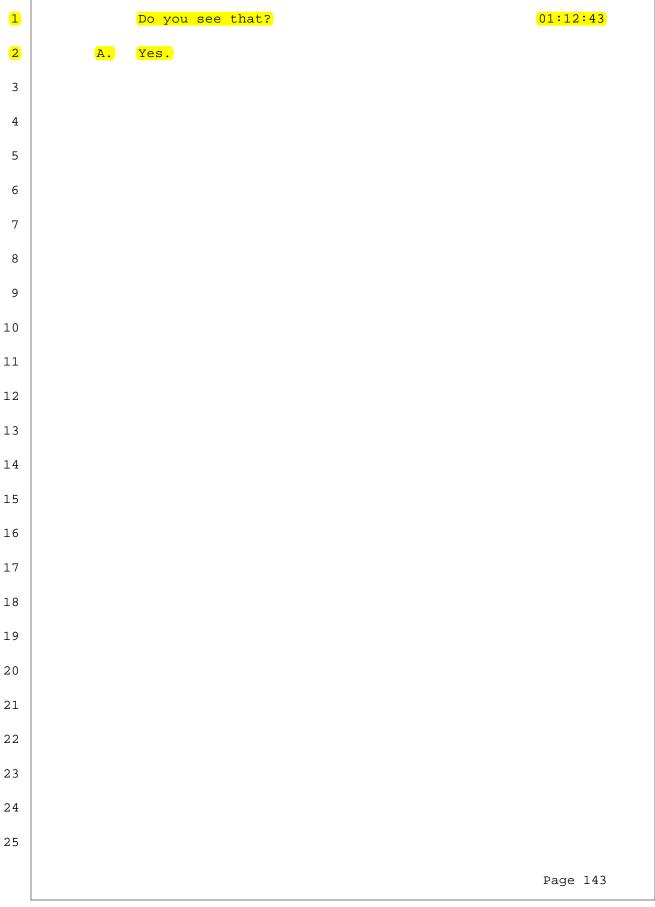
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 79 of 184 HIGHLY CONFIDENTIAL

1	were for Fortnite?	01:09:46
2	A. Uh-huh.	
3	Q. There's then a separate entry for Rocket	
4	League and "Third Party Publishing - Dauntless" and	
5	Paragon and for you know, the 30 percent is	01:09:55
6	listed again for the console makers with respect to	
7	all three of those games, correct?	
8	A. That's correct.	
9	Q. Okay. And my question also, if you see	
10	that entire list of percentages, they're all	01:10:12
11	30 percent except for Gearbox Software is	
12	40 percent and Samsung Electronics Co., Ltd., is	
13		
14	Focusing on the 40 percent Gearbox, is	
15	Gearbox the entity that you identified as the	01:10:27
16	company that used to distribute your that used	
17	to distribute Fortnite via disk?	
18	A. That's correct.	
19	Q. And and Gearbox is not the company	
20	that's distributing the I think you called it	(01:10:40)
21	code in a box. They just did the disks, right?	
22	A. Correct.	
23	Q. Does this 40 percent number refresh your	
24	recollection in any way as as to whether this	
25	was the commission that you were that Epic was	01:10:52
		Page 141

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 80 of 184 HIGHLY CONFIDENTIAL

1	paying Gearbox?	01:10:55
2	A. I would assume, if this document is from	
3	Epic finance, that that's the correct number.	
4		
5		
6		
7		
8	MR. SRINIVASAN: And Exhibit 81, for the	
9	record, while the technical folks blow this up, is	
10	from the same document we just discussed, which is	01:11:46
11	Epic Bates Number 03848271, but it is a PDF of the	
12	second tab on this Excel sheet which is financials.	
13	Q. (By Mr. Srinivasan) And in and,	
14	Mr. Kreiner, if you can see on Exhibit 81, there	
<mark>15</mark>	first of all, it's titled "Epic Games Non-GAAP"	01:12:12
16	Consolidated Financials."	
17	Do you see that?	
18	A. Yes.	
19	Q. And, again, this is something we	
20	received. It's the same file that we just looked	01:12:20
21	at from Epic. You can see I just want to direct	
22	you to the the the part that says "Fortnite."	
23	And under it, it lists the three	
24	consoles PS4, Xbox One, Switch then PC, and	
25	then the two mobile platforms, iOS and Android.	01:12:37
		Page 142

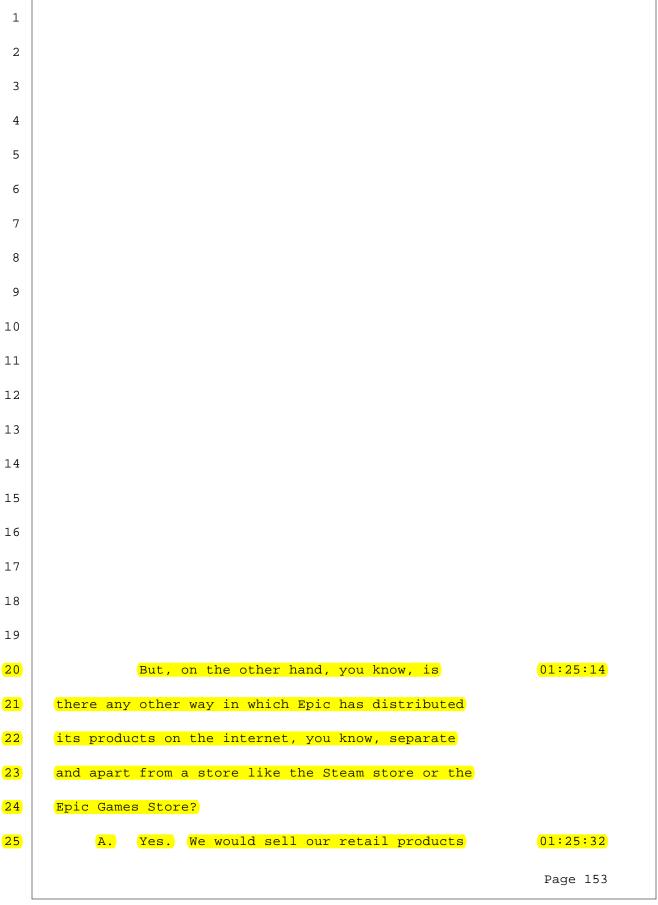
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 81 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 82 of 184 HIGHLY CONFIDENTIAL

1	I think we you testified that the	01:19:32
2	revenue numbers for Apple in terms of 2018 in terms	
3	of its relative share of overall revenue coming in	
4	for Fortnite was about 6 to 7 percent.	
5	Would you agree with that?	01:19:48
6	A. Yes, that's what you said, and I agreed	
7	to it.	
8	Q. And would you would you agree that	
9	that percentage seems to carry forward for 2019 as	
10	well?	(01:20:00)
11	A. I'm not doing the math in my head, but it	
12	does appear that's the case.	
13	Q. And same for 2020?	
14	A. Yeah.	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 149

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 83 of 184 HIGHLY CONFIDENTIAL



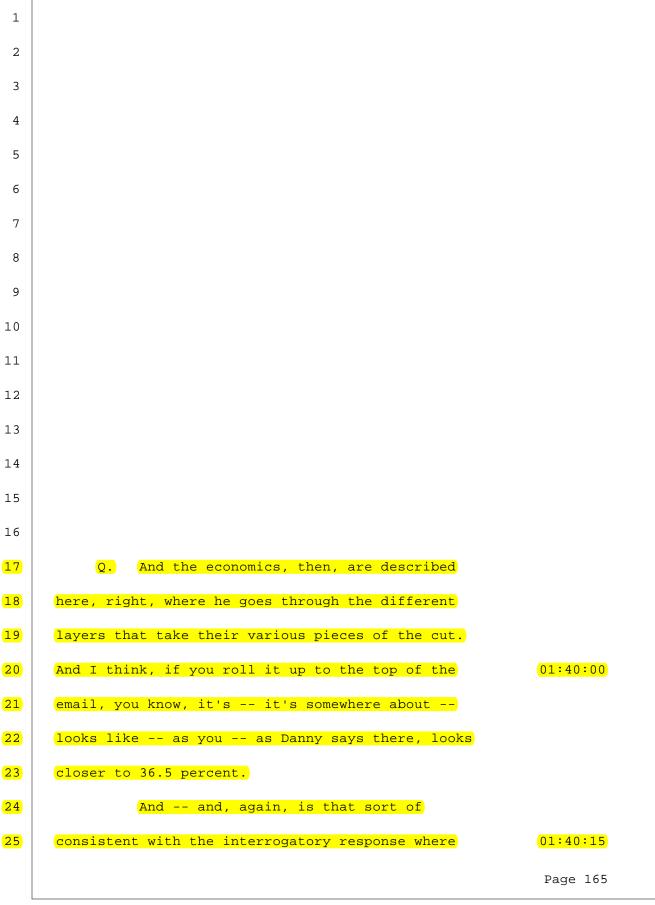
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 84 of 184 HIGHLY CONFIDENTIAL

1	on retail	ler webs	ites; so,	you know,	BestBuy.com,	01:25	:34
2	Walmart.c	com, Gam	eStop.com,	Amazon.co	m.		
3	Q.	Okay.	And so in	those cas	es you're		
4	talking a	about ei	ther the p	hysical di	sk back when		
5	you were	selling	physical	disks or t	he the	01:25	:48
6	code-in-a	a-box-ty	pe concept	; is that	right?		
7	<b>A</b> .	You're	correct.				
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
						Page	154

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 85 of 184 HIGHLY CONFIDENTIAL

1	(Exhibit 0083 was marked for	01:38:05
2	identification by the court reporter and is	
3	attached hereto.)	
4	MR. SRINIVASAN: So, Mr. Kreiner, I think	
5	it's Exhibit 83 in the folder, when you get a	01:38:13
6	chance.	
7	And while you're taking a look at that,	
8	I'll just say for the record Exhibit 83 is an email	
9	chain involving Mr. Kreiner, Danny Block, and	
10	others at Epic from July of 2019, with the subject	01:38:27
11	line "Fortnite Card Economics." And the Bates	
12	number ends on the first page 567, and it carries	
13	over into a second page ending in 568.	
14	Q. (By Mr. Srinivasan) So, Mr. Kreiner, I	
<mark>15</mark>	don't know if have you had a chance to look at	01:38:46
16	this email?	
17	A. Yes.	
18		
19		
20		
21		
22		
23		
24		
25		
		Page 164

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 86 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 87 of 184 HIGHLY CONFIDENTIAL

you talked about Epic receiving 70 to 60 to 70 percent?	01:40:18
(A. (Yes.)	
Q. Okay. Okay. And so would you is it	01.40.07
fair to say that this email reflects sort of the	01:40:27
broad economics of how the gift card/POSA card	
process works at Epic?	
A. Yes.	
	Page 166

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 88 of 184 HIGHLY CONFIDENTIAL

1		
2	Q. Okay. And then how do you account for	
3	those bundles? In other words, is it just the same	
4	as the card that we just described, or is there a	
5	different set of economics for that?	01:43:03
6	A. It's a different set of economics. So in	
7	this case Microsoft, Sony, and Nintendo don't	
8	charge Epic for generating those codes. Typically,	
9	these bundles are done as a marketing exercise and	
10	Epic's not compensated. There have been a few	01:43:20
11	instances where we are. So some of the early	
12	console bundles that we did with Microsoft, they	
13		
14		
15		01:43:37
16		
17		
18		
19		
20		01:43:50
21	Q. Can you get into why that's the case? In	
22	other words, why were you getting compensated early	
23	on and then aren't getting compensated anymore?	
24	You know, one might think it would intuitively go	
25	the other way. Is there is there a reason for	01:44:07
		Page 168

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 89 of 184 HIGHLY CONFIDENTIAL

1	that?	01:44:10
2	A. I think our initial discussions with	
3	Microsoft and Nintendo and Sony, all of those	
4	parties are just used to paying for these kind of	
5	bundles. They're coming from the more traditional	01:44:21
6	game development world where you're bundling the	
7	game that someone pays up front for. And, you	
8	know, even early on in Fortnite, you were buying	
9	Save the World.	
10	As the game progressed, it became more	01:44:36
11	about Battle Royale. It's a free-to-play game. So	
12	we were more interested in being distributed to new	
13	users. Someone's buying a console; they're a new	
14	user in that ecosystem. You'd rather them get	
15	exposed to Fortnite immediately.	01:44:54
16	So we just declined to pursue financial	
<mark>17</mark>	gain, and the first parties were happy to oblige	
18	us.	
19		
20		
21		
22		
23		
24		
25		
		Page 169

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 90 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6		
7		
8		
9		
10	Do you think Epic should pay less than	01:48:28
11	30 percent to the consoles as far as the	
12	commission?	
13	A. No. I feel like they generate	
14	significant user acquisition and revenue for us,	
15	that they're a primary venue for us to generate	01:48:43
16	revenue, and that they earn their 30 percent.	
17	Q. And and so you're if I understand	
18	it, you don't think it's you don't think they	
19	should pay less because they are generating a big	
		01.40.55
20	volume. Is that you're sort of tying it to the	01:48:57
21	amount of the volume of revenue they bring in?	
22	A. Certainly that. But also we have a very	
23	good working relationship with those platforms.	
24	They do a lot of networking and marketing on Epic's	
25	behalf.	01:49:13
		Page 172

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 91 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
 7
 8
 9
10
          Q. (By Mr. Srinivasan) Okay. And do you
11
12
      understand that the 30 percent commission that
13
      you're paying is actually just for payment
14
      processing alone?
15
               THE DEPONENT: No, it's not. They do
16
      quite a bit more than just process payments.
17
18
19
20
21
22
          Q. Okay. I think you mentioned earlier this
      morning, you know, the -- the additional things
23
24
      that they do. And I'm going to read some. I'm
25
      just -- if I got this right, I try to write --
                                                             Page 175
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 92 of 184 HIGHLY CONFIDENTIAL

1	write this down they had weekly meetings that	01:52:27
2	they were a significant revenue generator, that	
3	they gave you store placement, that free store	
4	placement in addition to what you were advertising,	
5	marketing terms of around events and social	01:52:43
6	media. And and I think that's all I got.	
7	First of all, was that an accurate list	
8	of what you had said earlier?	
9	A. Yes. They do more than that.	
10	Q. Okay. And, please, what else do they do,	01:52:56
11	in your mind, to merit the 30 percent commission?	
12	A. They have marketed Fortnite at physical	
13	events, like PAX or, you know, trade shows. They	
14	take out retail ads for for Fortnite on	
<mark>15</mark>	occasion. Social media posts, focused blog posts	01:53:20
16	on Fortnite content. They retweet many of Epic's	
17	social media posts surrounding content in Fortnite.	
18	And we also get have done things like	
19	dash callouts inside of PlayStation. When a user	
20	logs in, they get notified Fortnite's got a new	01:53:45
21	content drop.	
22		
23		
24		
25		
		Page 176

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 93 of 184 HIGHLY CONFIDENTIAL

```
1
 2
 3
 4
 5
 6
 7
 8
          Q. Okay. And you had testified earlier that
9
      all three consoles do not allow Epic to set up its
10
      own payment mechanism, correct?
11
12
13
               THE DEPONENT: Correct.
14
          Q. (By Mr. Srinivasan) I'm sorry. I
15
      didn't -- correct. Yeah.
                                                             01:54:40
16
               So do you view that as being unfair in
17
      any way that they won't let you process your own
      payment -- they won't let Epic process its own
18
19
      payment?
20
          A. No, I don't think that's unfair.
                                                            01:54:54
21
22
23
24
          Q. So it's -- it's typically -- would you 01:55:08
25
                                                              Page 177
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 94 of 184 HIGHLY CONFIDENTIAL

1	agree that it's typically something that users	01:55:11
2	prefer, that they're able to deal with the console	
3	on a global basis rather than having to enter their	
4	information for every vendor?	
5	A. I don't know about preferred, but it's	01:55:22
6	the standard practice.	
7	Q. Okay. And do you do you agree that it	
8	makes it easier for users to handle it that way?	
9	A. Yes.	
10	Q. Okay. What about the idea of having your	01:55:34
11	own direct distribution option on these platforms.	
12	You testified earlier that the consoles won't allow	
13	you, for instance, to distribute directly on them,	
14	correct?	
15	A. Correct.	01:55:55
16	Q. Do you do you view that as unfair that	
17	they won't let you do that?	
18	A. No.	
19		
20		
21		
22		
23		
24		
25		
		Page 178

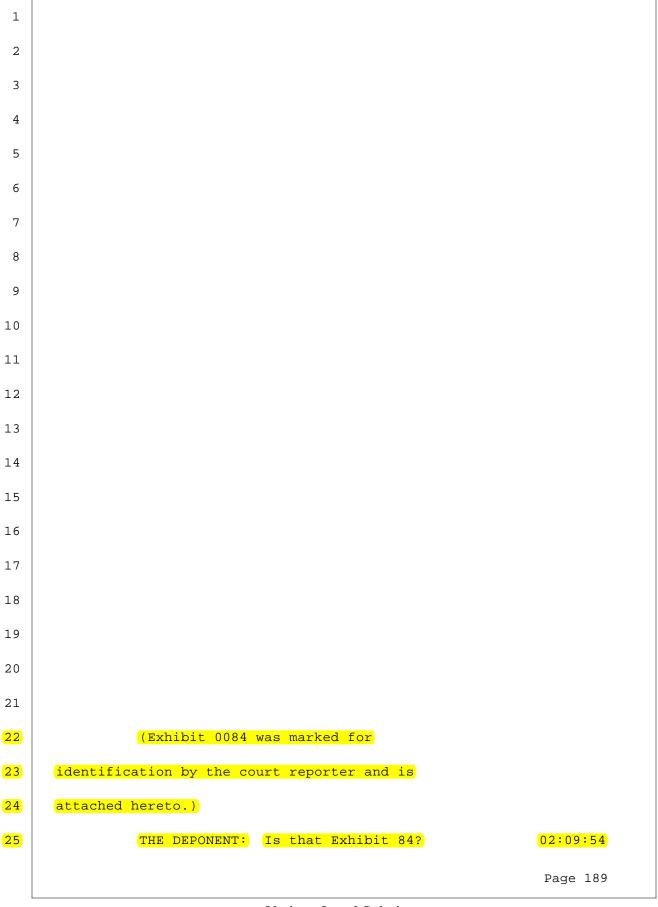
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 95 of 184 HIGHLY CONFIDENTIAL

```
1
     said you can't price elsewhere lower than what you
01:56:29
2
     price on -- on my platform, correct?
          A. Yes. They impose significant
3
     restrictions on us.
4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
          Q. Sure. Do you -- you had said earlier
20
     that each one of the three consoles mandates that 01:57:10
21
     Epic provide, you know, basically best pricing
22
     on -- on their respective consoles, correct?
          A. Uh-huh. Yes.
23
          Q. And, in other words, you're not -- Epic
24
25
     is not free to price Fortnite differently on Xbox 01:57:22
                                                             Page 179
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 96 of 184 HIGHLY CONFIDENTIAL

1	versus the PlayStation, correct?	01:57:27
		(01.57.27)
2	A. That's correct.	
3	Q. And do you view that restriction as	
4	anticompetitive?	
5	A. My personal opinion is it can be a little	01:57:36
6	anticompetitive; but given the way we operate	
7	Fortnite on all seven platforms, it's a way to	
8	prevent players from jumping around on platforms	
9	and having a bad experience.	
10	Q. How would they how would they have a	01:57:59
11	bad experience how would a player have a bad	
12	experience if a certain platform, you know, priced	
13	the digital products differently?	
14	A. Well, you would see lots of arbitrage	
<mark>15</mark>	between platforms. You'd have users, you know,	01:58:14
16	buying one to use on another. It causes a lot of	
17	users logging in and logging out. (It's the	
18	while while they would look like they're, you	
19	know, potentially saving money, it's just a bad	
20	experience. You would feel bad for somebody that	01:58:33
21	had purchased something on PlayStation and then see	
22	that it's available for less money on Xbox.	
23		
24		
25		
		Page 180

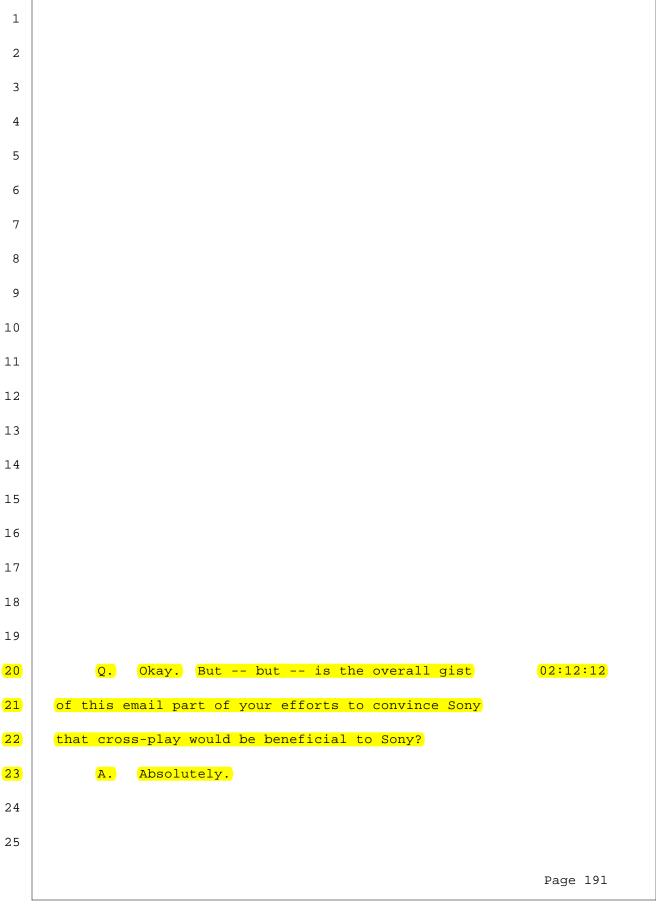
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 97 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 98 of 184 HIGHLY CONFIDENTIAL

1	Q. (By Mr. Srinivasan) Yeah, it'll be	02:09:55
2	Exhibit 84.	
3	And so while you look at this,	
4	Mr. Kreiner, Exhibit 84 is an email chain involving	
5	Mr. Kreiner and others, including a Phil Rosenberg	02:10:16
6	at Sony. It is dated February the top email is	
7	dated February 20th, 2018. It has the subject line	
8	"Fortnite cross-play." And it's a Bates number	
9	ending in 199.	
10	So, Mr. Kreiner, do you recall this email	02:10:35
11	exchange?	
12	A. Vaguely, sure.	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 190

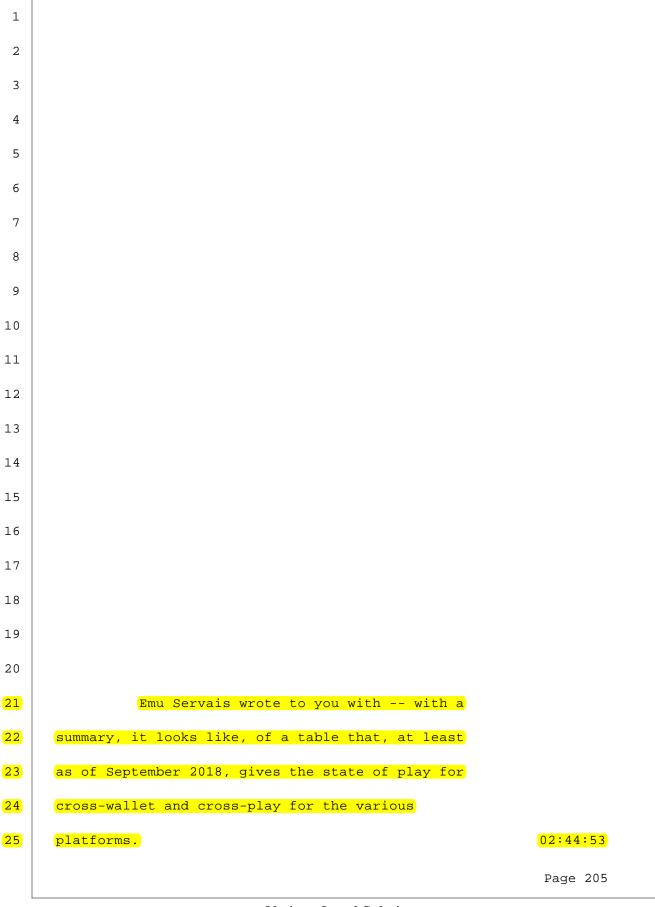
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 99 of 184 HIGHLY CONFIDENTIAL



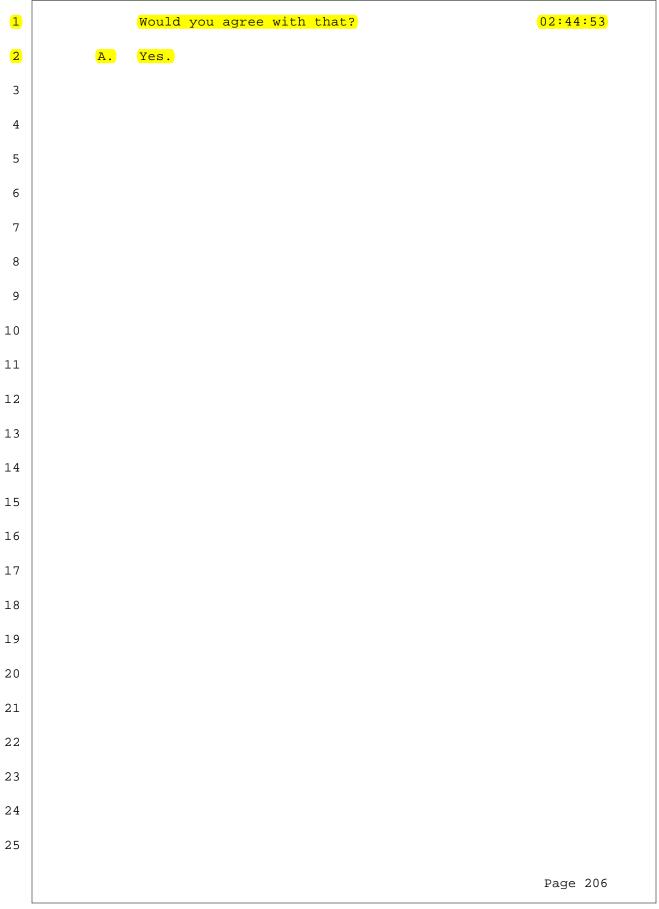
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 100 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6	(Exhibit 0088 was marked for	
7	identification by the court reporter and is	
8	attached hereto.)	
9	Q. (By Mr. Srinivasan) So, Mr. Kreiner,	
10	we'll get a new document up. While it's coming	02:42:37
11	up I don't know if it's up yet. It will be	
12	Exhibit 88. But I don't know if it's populated	
13	yet. I guess it has.	
14	A. Yes, it has.	
15	Q. Okay. Great. Let me introduce the	02:42:52
16	exhibit, and I'll ask you some questions about it.	
17	Exhibit 88 is a one-page email chain with	
18	the top email being from Mr. Kreiner to Danny Block	
19	sent on September 12th, 2018, with the subject line	
20	"Cross-wallet."	02:43:08
21		
22		
23		
24		
25		
		Page 204

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 101 of 184 HIGHLY CONFIDENTIAL



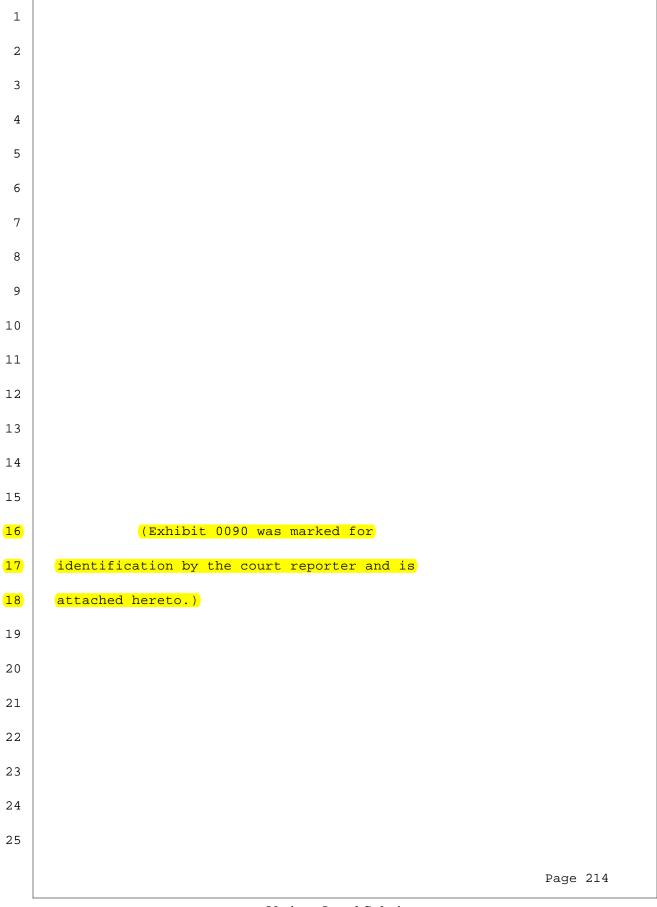
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 102 of 184 HIGHLY CONFIDENTIAL



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 103 of 184 HIGHLY CONFIDENTIAL

```
1
 2
           Q. And then the next one is PS4. And as of
 3
      September 2018, there is no -- this reflects that
 4
 5
      there's no cross-wallet and there's cross-play but 02:46:05
      only with PCs, Macs, and mobile, correct?
 6
7
          A. That's what this indicates, yes.
 8
 9
10
11
12
13
14
15
16
          Q. In this chart. And then you have
      Nintendo, which is no for cross-wallet but yes for
17
18
      cross-play.
19
               Is that consistent with your
20
      recollection?
                                                              02:46:48
          A. Yes, that's correct. And that's still
21
22
      the case today.
23
24
25
                                                               Page 207
```

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 104 of 184 HIGHLY CONFIDENTIAL



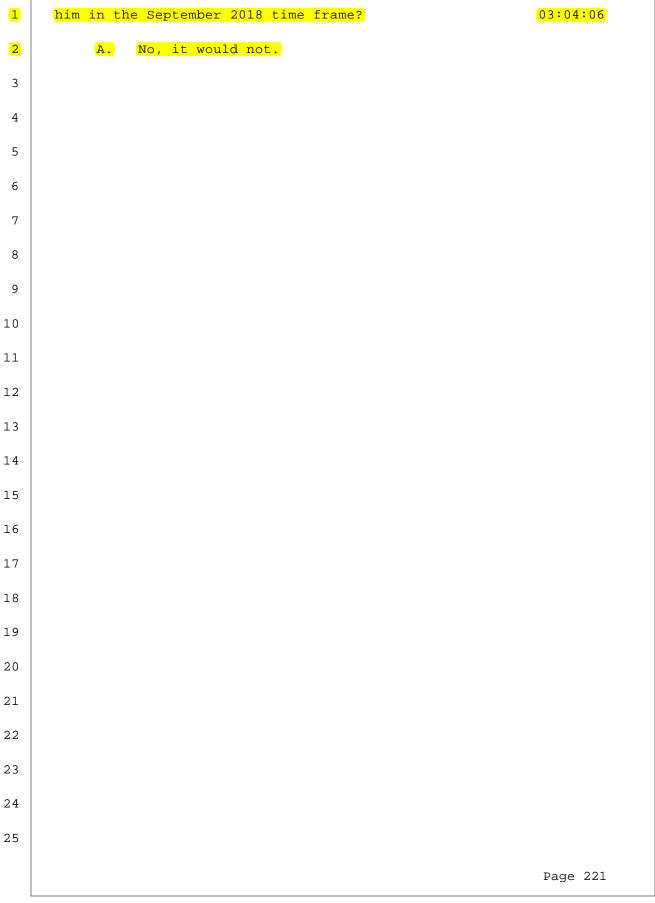
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 105 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6		
7	I want to direct your attention to the	
8	bottom email. This is from so the email is on	
9	the second page, and it bleeds into the third page.	
10	It's the one from Mr. Silva to you on March 2nd,	02:57:20
11	2018.)	
12	Do you see that?	
13	A. Yes.	
14	Q. He says at the beginning of that email,	
<mark>15</mark>	"Joe, As discussed in person, we are willing to	02:57:27
16	move forward with adding cross-play with mobile in	
17	Fortnite with the following implanted in exchange,"	
18	and then he describes in details.	
19	Now, is this Mr. Kreiner part of the	
20	requirements with Sony that, if you wanted to add	02:57:44
21	cross-play on new platforms, you had to get their	
22	permission?	
23	A. Yes.	
24		
25		
-		
		Page 215

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 106 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
               (Exhibit 0091 was marked for
7
      identification by the court reporter and is
 8
      attached hereto.)
          Q. (By Mr. Srinivasan) So, Mr. Kreiner, I
9
10
      think we have available now Exhibit 91. Exhibit 91 03:03:14
11
      is a -- again, I think it's maybe a text exchange
12
      between a Devin Winterbottom and yourself on
13
      September 25th, 2018. And it's -- it's a single
14
      page, and it's Bates number ending in 676.
               So, Mr. Kreiner, first of all, is this a 03:03:41
15
16
      text exchange, if you recognize this format?
17
          A. I don't recognize this format; so I don't
      know.
18
19
          Q. Okay. Have you -- do you text as part of
20
      your work functions ever?
                                                             03:03:53
21
          A. On occasion.
          Q. Okay. And is -- is Mr. Winterbottom
22
      somebody who you work with?
23
24
          A. Yes.
          Q. Would it surprise you if you had texted 03:04:03
25
                                                              Page 220
```

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 107 of 184 HIGHLY CONFIDENTIAL



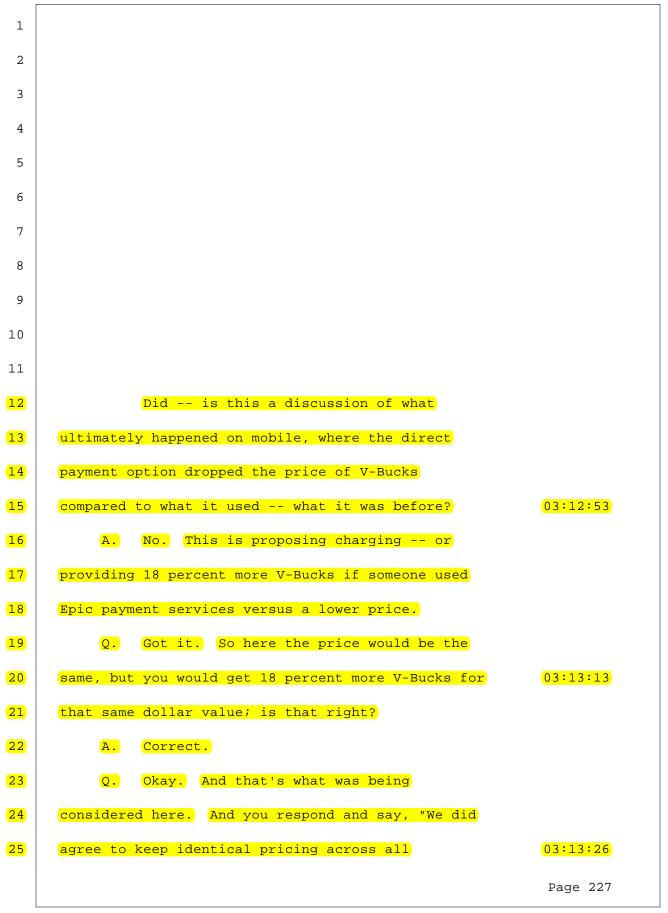
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 108 of 184 HIGHLY CONFIDENTIAL

```
1
 2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
                (Exhibit 0092 was marked for
21
22
      identification by the court reporter and is
23
      attached hereto.)
                MR. SRINIVASAN: Okay. So the next
24
      exhibit is Exhibit 92. And 92 is a two-page email 03:10:38
25
                                                                 Page 225
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 109 of 184 HIGHLY CONFIDENTIAL

1	chain, again mostly almost all the substances is	03:10:41
2	on page 1. The top email is from Joe Kreiner to	
3	Ed Zobrist and some others at Epic Games sent on	
4	April 24th, 2020, with the subject line "Your POV"	
5	on possible payment options." (And the first page	(03:11:01)
6	ends with Bates number or ends with the Bates	
7	number ending in 047.	
8	Q. (By Mr. Srinivasan) Mr. Kreiner, do you	
9	recall this email exchange?	
10	A. Yes.	03:11:16
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 226

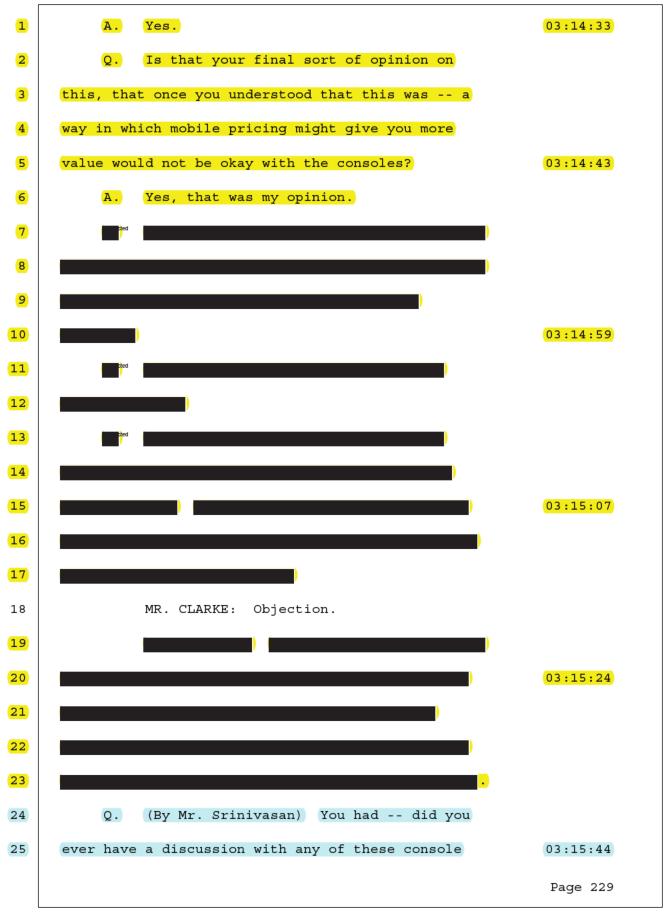
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 110 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 111 of 184 HIGHLY CONFIDENTIAL

1	platforms with Microsoft, Sony, and Nintendo."	03:13:31
2	And then but you say, "That being	
3	said, all they care about is that we are not using	
4	arbitrage to direct sales away from their	
5	platform." And then you say, "They are entirely	03:13:41
6	self-serving; so making mobile less attractive	
7	would likely work for them."	
8	Do you know what you meant by that?	
9	A. Yeah. I was giving Ed my interpretation	
10	of what Sony, Microsoft, and Nintendo would	03:13:54
11	would say to us if we decided to implement this	
12	strategy.	
13	Q. And you're saying, though, initially that	
14	they would be okay with something like this,	
15	correct?	03:14:06
16	A. That's my supposition here. I'm not sure	
17	if that actually would have been correct.	
18	Q. Well, I mean, he then he then says, "I	
19	think the idea is for the exact same purchase price	
20	a mobile player would get 18 percent more V-Bucks	03:14:18
21	if they chose our payment system versus the Apple	
22	or Google payment system." And to which you	
23	respond, "Making it more advantageous to buy on	
24	mobile than on console is not an option."	
25	Do you see that?	03:14:32
		Page 228

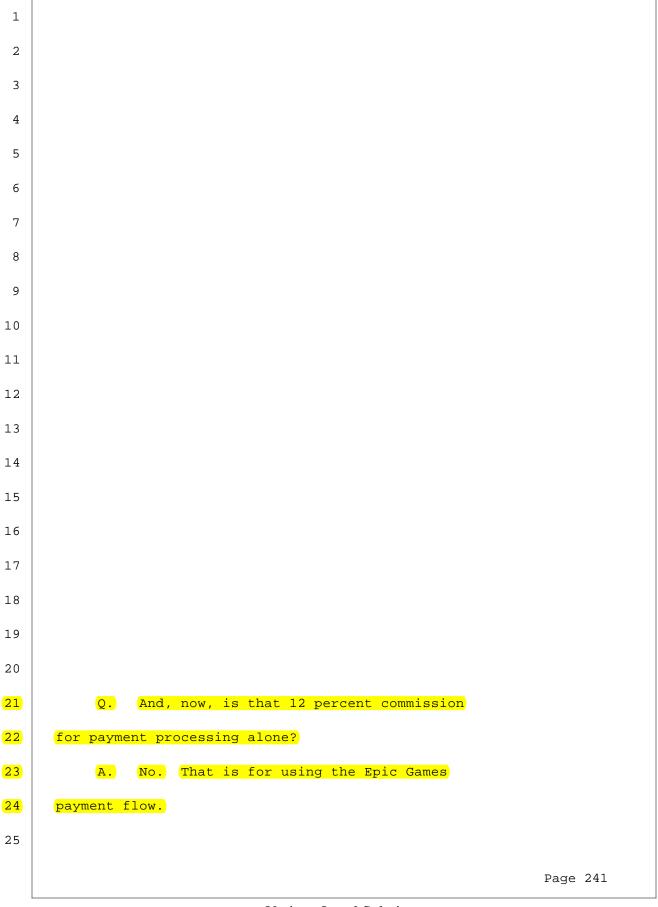
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 112 of 184 HIGHLY CONFIDENTIAL



### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 113 of 184 HIGHLY CONFIDENTIAL

```
folks about this idea, or this was just your --
1
                                                                 03:15:46
      your supposition?
2
3
           A.
                This was just my supposition.
 4
 5
 6
 7
 8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
                                                                  Page 230
```

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 114 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 115 of 184 HIGHLY CONFIDENTIAL

1		
2		
3		
4		
5		
6		
7		
8		
9	Q. Well, I'm saying, you know, somebody	
10	might ask you, you know, "Joe, you're charging me	03:32:28
11	12 percent on on every sale on your store.	
12	What what are you charging me for? My payment	
13	processing doesn't cost 12 percent. What are you	
14	charging me for?"	
<mark>15</mark>	A. Sure. The services we provide game	03:32:41
16	developers are CDN hosting, player support,	
17	marketing of their games, and handling of refunds.	
18	Q. Anything else?	
19	A. I'm I mean, there's lots of technical	
20	support. We also waive on Unreal Engine royalties	03:33:02
21	if the game is using Unreal Engine, which are	
22	typically 5 percent. So there's a benefit to game	
23	developers for shipping the games if they're using	
24	Unreal Engine on the Epic Games Store.	
25	Q. What else do you provide for developers?	03:33:25
		Page 242

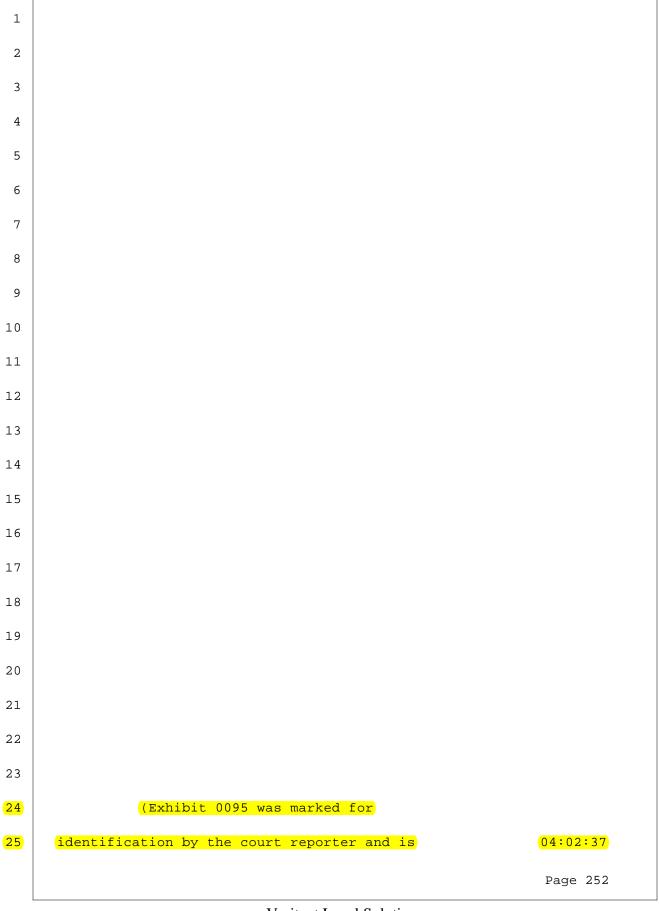
## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 116 of 184 HIGHLY CONFIDENTIAL

1	Or is that a pretty compressive list?	03:33:27
2	A. No. We also have a supporter/creator	
3	marketing program where currently Epic pays	
4	influencers a 5 percent-of-sales fee if they	
5	successfully refer a paying customer into our	03:33:39
6	ecosystem to go buy a game or in-app transactions.	
7	And then we also do social you know	
8	social media for game launches, video promotions.	
9	We've done featuring at physical events, such as	
10	E3. And we do sponsorships of the video games	03:34:03
11	the video games awards as well as other events	
12	where we feature games that are available on the	
13	Epic Games Store.	
14	Q. So	
<u>15</u>	A. So significant marketing interaction.	03:34:21
<mark>16</mark>	Q. So the 12 percent is not limited to just	
17	a payment processing fee?	
18	A. Correct.	
19	Q. And it sounds like it it's tied into	
20	these broader ecosystem benefits that you provide	03:34:31
21	to your developers?	
22	A. That's correct.	
23		
24		
25		
		Page 243

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 117 of 184 HIGHLY CONFIDENTIAL

1		
2	Q. Okay. Is is the Epic Games Store	
3	profitable at a 12 percent commission?	
4	A. It's not profitable today because we're	
5	in growth mode and focused on acquiring users. So	03:35:07
6	we're spending significant amounts of money	
7	acquiring exclusive content and giving free games	
8	away. So those those investment costs are	
9	significant. I would expect, eventually, for us to	
10	be able to turn a profit.	03:35:28
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 244

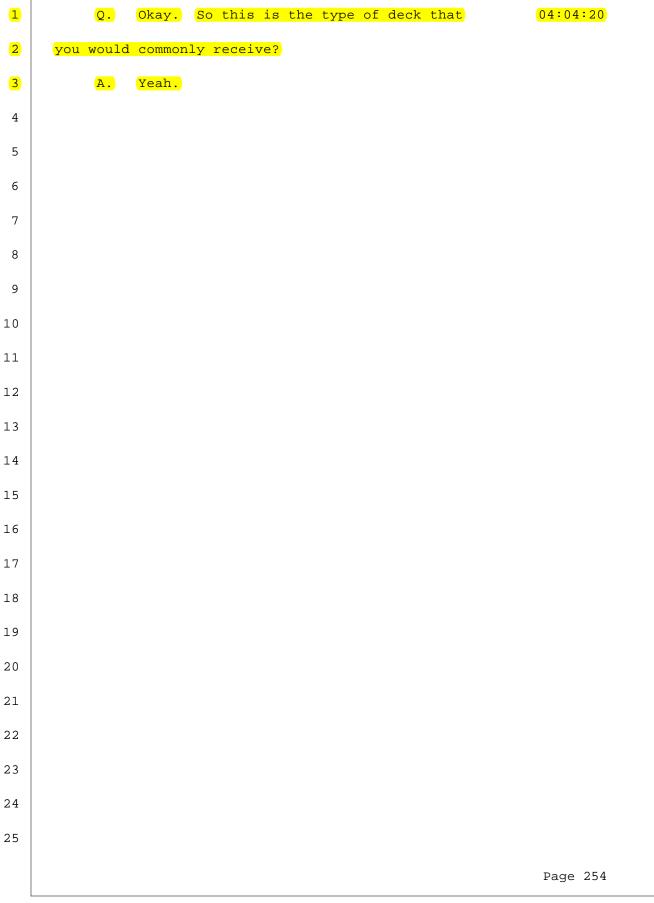
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 118 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 119 of 184 HIGHLY CONFIDENTIAL

1	attached hereto.)	04:02:37
2	MR. SRINIVASAN: This will be Exhibit 95.	
3	THE DEPONENT: Okay.	
4	MR. SRINIVASAN: Okay. Sorry. My	
5	computer is little slower than yours. Go ahead and	04:03:06
6	take a look at Exhibit 95, Mr. Kreiner, and I'll	
7	read it into the record, and then we can talk about	
8	it.)	
9	Exhibit 95 is a PowerPoint deck titled	
10	"Epic Games Store, Review of Performance and	04:03:24
11	Strategy, October 25th, 2019." It starts with	
12	Bates number ending in 277 and goes through Bates	
13	number ending in 297.	
14	Q. (By Mr. Srinivasan) And the the	
<mark>15</mark>	the page that I'd like to direct your attention to,	04:03:48
16	Mr. Kreiner, it's numbered 17; it's Slide 17. And	
17	the Bates number, the control number there at the	
18	bottom, ends in 293.	
19	A. Okay.	
20	Q. And the title is "5 Year P&L and User	04:04:02
21	Forecast."	
22	And, you know, I first of all, do you	
23	recall this deck in particular?	
24	A. Not in particular. This is a a common	
25	format that we use on a recurring basis.	04:04:17
		Page 253

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 120 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 121 of 184 HIGHLY CONFIDENTIAL

1		
2		
3	So current let's take a look at this	
4	model first of all, the document we're looking	
5	at from October of 2019 indicates that at the	04:06:57
6	current business model at a 12 percent commission	
7	the the Epic Games Store was not projecting to	
8	make any money five years out under either model,	
9	correct?	
10	A. Yes, although that's based on a	04:07:12
11	pessimistic model of recouping minimum guarantees.	
12	Q. Okay. And, currently, I think you	
13	testified already that the game that the game	
14	store, as it stands today in early 2021, is still	
15	not making money, correct?	04:07:29
16	A. That's my understanding.	
17	Q. Okay. And in and if and is it your	
18	testimony, then, that there will be more current	
19	versions of this document at Epic that would show	
20	a a different story?	04:07:41
21	A. Yes.	
22		
23		
24		
25		
		Page 256

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 122 of 184 HIGHLY CONFIDENTIAL

1	Q. Okay. What has changed about the	04:07:56
2	projections, to the extent that you know, to	
3	suggest that, you know, that the picture is not	
4	as is not what's portrayed here on this slide?	
5	A. We have been more successful at	04:08:12
6	recovering our minimum guarantees with more recent	
7	launches. We're much farther ahead in user	
8	acquisition than these models assumed.	
9	You know, in 2020 we had a very	
10	significant user acquisition event in giving away	04:08:29
11	Grand Theft Auto V, and that reset a lot of the	
12	expectations because we have many more people	
13	coming to the store purchasing games.	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 257

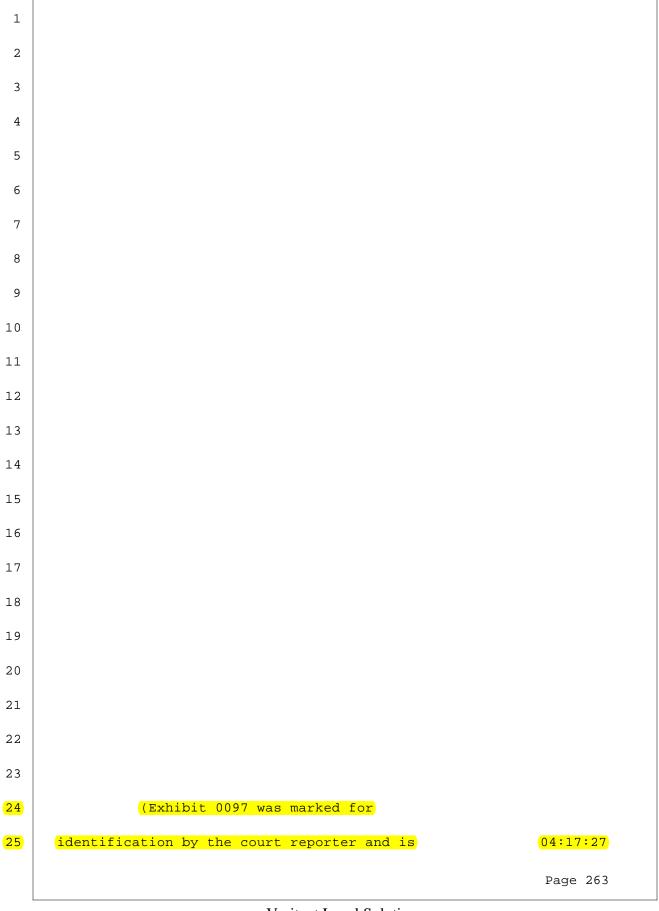
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 123 of 184 HIGHLY CONFIDENTIAL

```
1
 3
 4
 5
 6
 7
 8
10
               (Exhibit 0096 was marked for
                                                             04:12:02
      identification by the court reporter and is
11
12
      attached hereto.)
13
               MR. SRINIVASAN: 96 is a email chain of
14
      several pages. The top chain is from Scott Adams
      at Epic Games to a number of folks, including 04:12:30
15
16
      Mr. Kreiner. The top email is dated May 1st, 2019.
17
      The subject line is "Fraud update for the week of
18
      April 14th."
19
               The first page has a Bates number ending
20
      in 569, and it goes through -- the final page has a 04:12:46
21
      Bates number ending in 577.
22
          Q. (By Mr. Srinivasan) Mr. Kreiner, do
      you -- first of all, have you had a chance to look
23
24
      at this email?
          A. Yes.
25
                                                             04:13:00
                                                              Page 260
```

## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 124 of 184 HIGHLY CONFIDENTIAL

1	Q. And do you recall this email chain from	04:13:07
2	when you received it?	
3	A. Yes, I do.	
4		
5		
6		
7		
8		
9	Q. And what was the issue here? Do you	
10	recall?	04:13:37
11	A. Yes. In particular, this is related to	
12	Ubisoft. And what was occurring yeah. What was	
13	occurring was hackers had identified that, if you	
14	purchased an Ubisoft game via the Epic Games Store,	
15	The Division 2 and Anno 17 or 1800, in this	04:14:04
16	particular case, if you refunded it via our	01111101
17	automated refund system, Ubisoft was not	
18	recognizing the refund.	
19	So you could create a bunch of Epic	
20	accounts, purchase the Ubisoft games, refund them,	04:14:23
21	and then hackers were selling the accounts in the	
22	gray market as containing those games because	
23	Ubisoft was not not removing the games from the	
24	user's account in a timely fashion.	
25		
		Page 261

### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 125 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 126 of 184 HIGHLY CONFIDENTIAL

1	attached hereto.)	04:17:27
2	MR. SRINIVASAN: This will be	
3	Exhibit 99 or 97.	
4	THE DEPONENT: [I'm sorry.] Are you	
5	skipping exhibits or	04:17:51
6	Q. (By Mr. Srinivasan) No. I think I	
7	just I screwed up the number. Yes, it's 97.	
8	A. Okay.	
9	Yes. I remember this email.	
10	Q. Yeah. Okay.	04:18:01
11	MR. SRINIVASAN: So just for the record,	
12	Exhibit 97 is a, you know, single-page email chain.	
13	The top email is from Tim Sweeney to Joe Kreiner	
14	and Steve Allison dated May 11th, 2019. Subject	
<mark>15</mark>	"Apology - Epic Games Store woes."	04:18:17
16	Q. (By Mr. Srinivasan) And so, Mr. Kreiner,	
17	you've anticipated my question. You do recall this	
18	<pre>email, correct?</pre>	
19	A. Yes.	
20		
21		
22		
23		
24		
25		
		Page 264

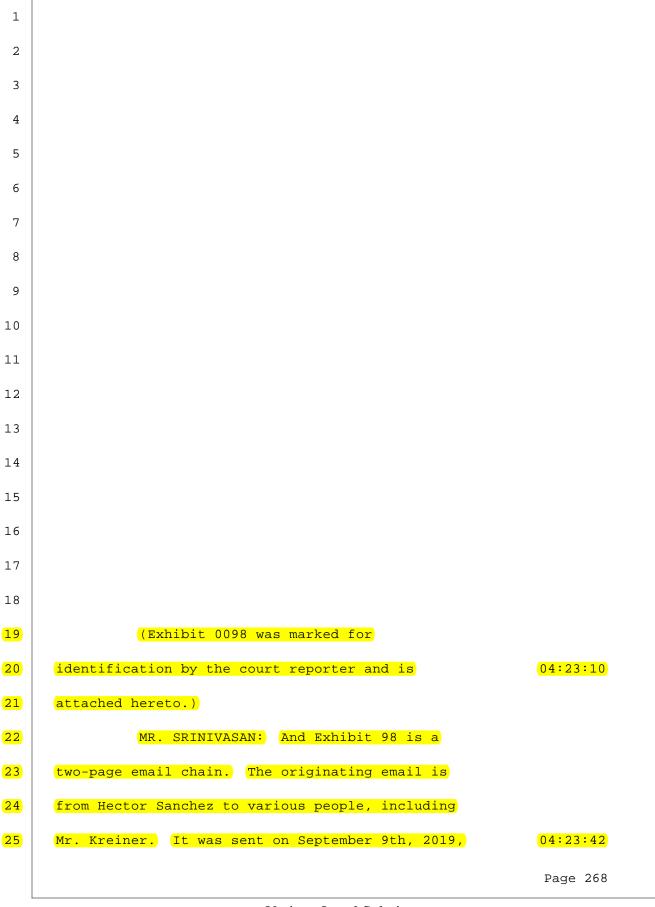
### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 127 of 184 HIGHLY CONFIDENTIAL



## Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 128 of 184 HIGHLY CONFIDENTIAL

1	A.	Specifica	ally, I	don't	remember	the	04:19:40
2	numbers.	But this	email	states	it; so I	would	
3	imagine t	hat's corr	cect.				
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
							Page 266

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 129 of 184 HIGHLY CONFIDENTIAL



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 130 of 184 HIGHLY CONFIDENTIAL

1	with the	subject line "Epic Key sales."	04:23:46
2	Q.	(By Mr. Srinivasan) Mr. Kreiner, do you	
3	remember	this email chain?	
4	<b>A</b> .	Not really, but it was definitely sent to	
5	me.		04:24:02
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
			Page 269
L		Veritort Local Solutions	

#### Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)

#### Deposition Designation of Haseeb Malik (February 12, 2021)

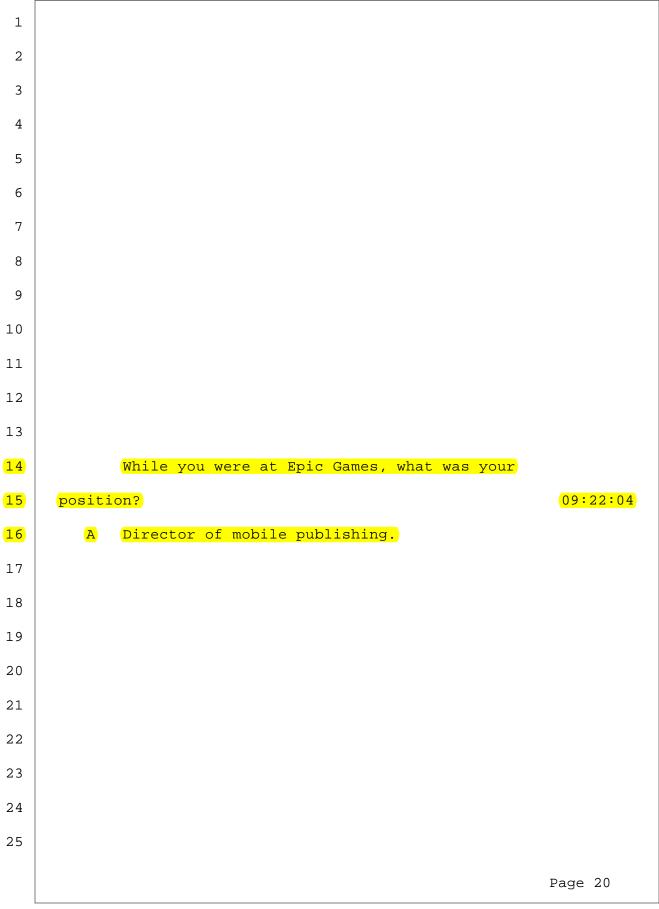
#### Time

Apple Inc.'s Designations	Epic Games, Inc.'s Designations	
(Yellow Highlight)	(Blue Highlight)	
9 minutes 14 seconds	1 minute 31 seconds	

۲۵	United States District Court Northern District of California		
A DEFENDANTA	Case No. 4:20-cv-05640-YGR Case Title Epic Games, Inc. v. Apple, Inc. Exhibit No. Depo. 3		
Δ.	Date EnteredSusan Y. Soong, Clerk •		
	By:, Deputy Clerk		

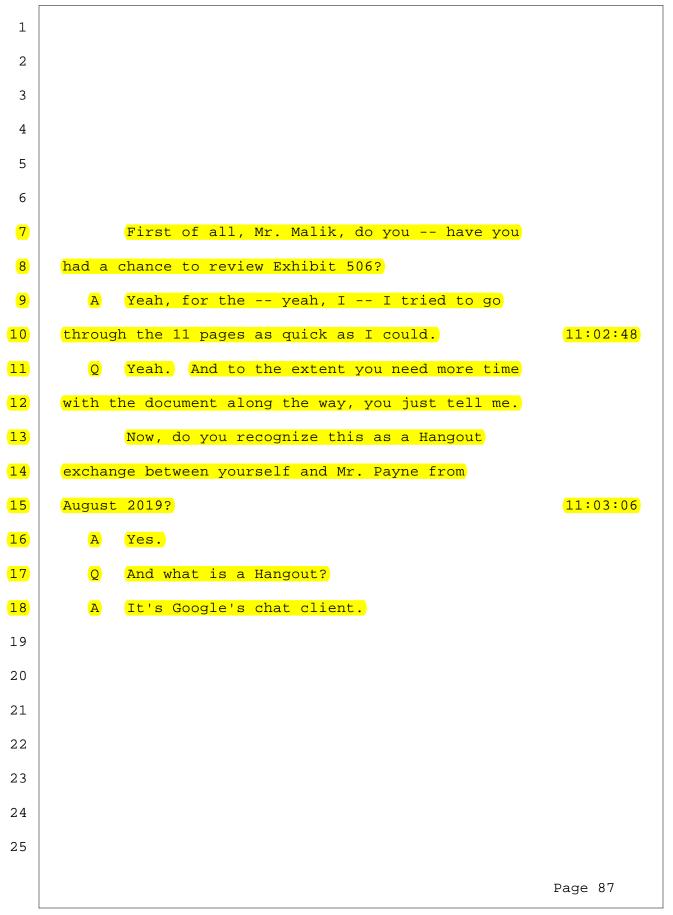
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 132 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	UNITED STATES DIS	STRICT COURT	
2	FOR THE NORTHERN DISTR	RICT OF CALIFORNIA	
3	OAKLAND DIVISION  United States District of Control Northern District On North		
4		Case No. 4:20-cv-05640-YG Case Title Epic Games, Inc. v. Ap	
5		Exhibit No. Depo. 3	, pre
		Date Entered	
6	IN RE APPLE iPHONE TRUST	) Case No. 4:11-cv-06715YGR	lerk
		) 4:11-cv-06714-YGR and	
7	LITIGATION	) 4:19-cv-03074-YGR	
		)	
8			
9			
10			
11			
12	** HIGHLY CONFIDENTIAL PURS	SUANT TO PROTECTIVE ORDER **	
13	REMOTE VIDEOTAPED DEPOSITION OF HASEEB MALIK		
14	Friday, Februar	ry 12, 2021	
15	Volume	e I	
16			
17			
18			
19	Reported by:		
	NADIA NEWHART		
20	CSR No. 8714		
21	Job No. 4453673		
22	PAGES 1 - 198		
23			
24			
25			
		Page 1	



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 134 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1		
2	(Exhibit 506 was marked for identification	
3	and is attached hereto.)	
4	BY MR. DOREN:	
5	And, Mr. Malik, the next exhibit will be	10:56:37
6	Exhibit 506. It's a multipage document bearing	
7	Bates numbers EPIC_00407322 through 332. And it is	
8	a series of it looks like a text string between	
9	you and Mr. Payne on from Saturday, August 3,	
10	2019.	10:57:06
11	Just wait for that to come up, and please	
12	take the time you need to review it.	
13	MS. MOSKOWITZ: It's not a text chain. I	
14	think this would have been a Hangouts in the	
<u>15</u>	production format.	10:57:19
<mark>16</mark>	MR. DOREN: Thank you.	
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 86



```
1
 2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
        Q And your next entry -- entry says (as read): 11:11:46
16
            "And for God's sake, why do we hate
17
            Apple?"
18
            And that was a question you had on August 3,
19
     2019, correct?
20
21
            THE WITNESS: I -- yeah. As you can tell by
22
     my tonality in this conversation, I appear quite
     frustrated as a new employee not being able to
23
     figure out how to effectively do my job. And so I
24
     am wondering why we are struggling with the
25
                                                           11:12:22
                                                           Page 95
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 137 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	platforms I'm supposed to work on.	
2	BY MR. DOREN:	
3	Q And your perception at the time was that Epic	
4	hated Apple, correct?	
5	A The language I'm using here is me trying to	11:12:32
6	figure out why the relationship is not the same as	
7	what I'm used to at other companies.	
8	Q With Apple?	
9	A With with Apple, uh-huh.	
10	Q And what you wrote was (as read):	11:12:44
11	"And for God's sake, why do we hate	
12	Apple, " correct?	
13	A That's what I wrote.	
14	Q And that was the question you had as of that	
15	date, correct?	11:12:56
16		
17		
18		
19		
20		
21		
22		
23		
24	A Yeah. So look, I so as I mentioned, I was	
25	having a pretty tough time at this period of being	11:13:09
		Page 96

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 138 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	there for a few months and not understanding why we	
2	were having some of the challenges we were having	
3	with mobile coming that I am coming from a a	
4	pretty strong mobile background, and this felt	
5	different to me for the world's largest game.	11:13:27
6	Q And and what challenges did you believe	
7	that the company was having with mobile after	
8	once you had been at the company for three months?	
9	A So the Android ones which were, as I	
10	mentioned, numerous steps imposed by the operating	11:13:39
11	system to to scale the game so you have to	
12	remember, if my if my job performance is is	
13	based on growing the mobile mobile users but I'm	
14	running into these hurdles, it's quite frustrating.	
15	And then regarding Apple, by this time, I've	11:13:58
16	already encountered a number of delays and so on in	
17	the review process. And so I am trying to figure	
18	out through talking to this colleague on why we're	
19	having all of these delays through the review	
20	process and and so on with Apple.	11:14:12
21	Q And what review process are you talking	
22	about?	
23	A So sometimes it takes a long time to get a	
24	a Fortnite build or it took a long time to get a	
25	Fortnite build through the review process at Apple	11:14:26
		Page 97

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 139 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

```
1
      relative to the speed in which the same builds would
      go through on the other platforms.
2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
                                                                Page 98
```

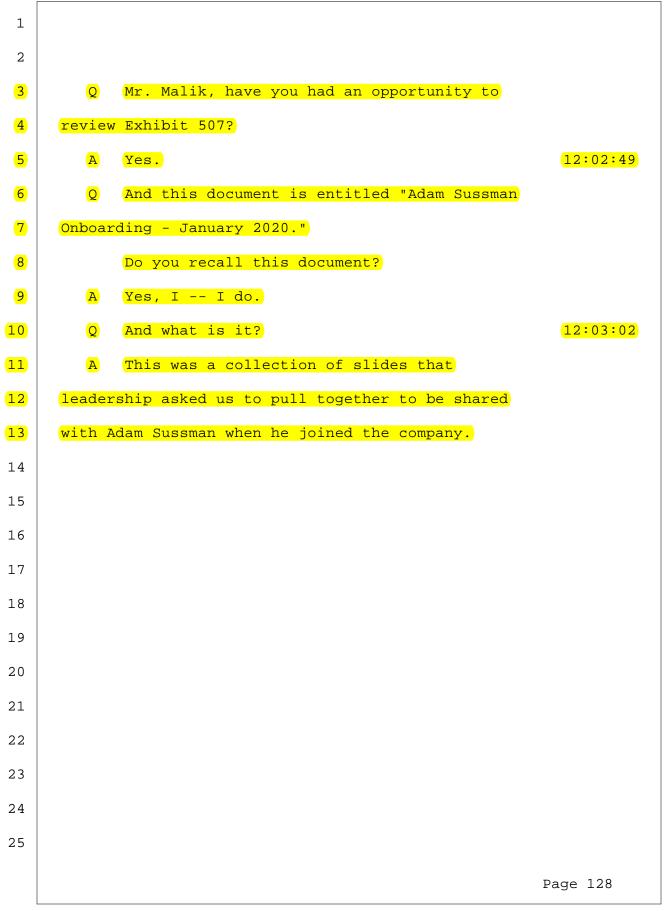
```
1
 3
 4
 5
 6
           And if you go down further at 8- -- or sorry,
7
     13:58:21, Mr. Payne says (as read):
8
9
            "I don't have the impression that
10
                                                            11:34:19
            our relationship is regularly
11
            antagonistic. Epic has been
12
            on-stage in several big Apple
13
            presentations in the last couple of
14
            years."
15
            Do you see that?
                                                            11:34:27
16
            Uh-huh, yes, I see that.
17
        0
            And you -- and you understand that to mean
18
     that Epic had made -- created opportunities for Epic
19
     to present at Apple events, correct?
20
            From my understanding, the company had been 11:34:41
21
     invited to share games in the past on -- at
22
     worldwide developer conference. So that's where I
23
     was -- this is all sort of coming from, and it -- it
24
      should be better than the way it is.
2.5
                                                          Page 117
```

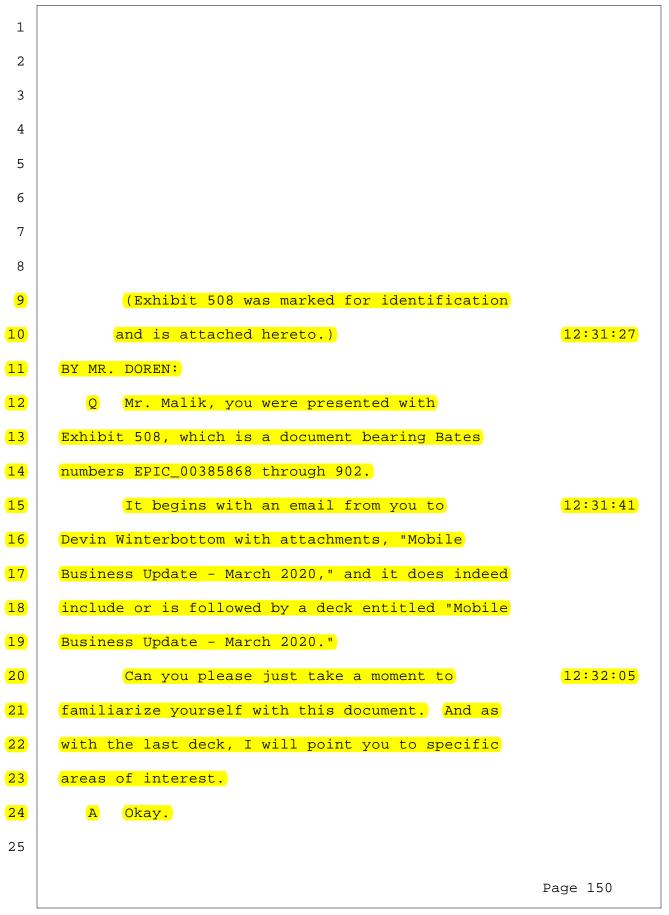
```
1
 2
 3
 4
 5
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
        Q Hi, Mr. Malik. We are preparing the next 11:58:14
20
21
     exhibit in order, which will be Exhibit 507, which
22
     is a deck entitled "Fortnite Mobile Adam Sussman
     Onboarding - January 2020."
23
24
            And it -- it -- the first page bears your
     name and Brian Chu's name. The document is Bates 11:58:39
25
                                                         Page 126
```

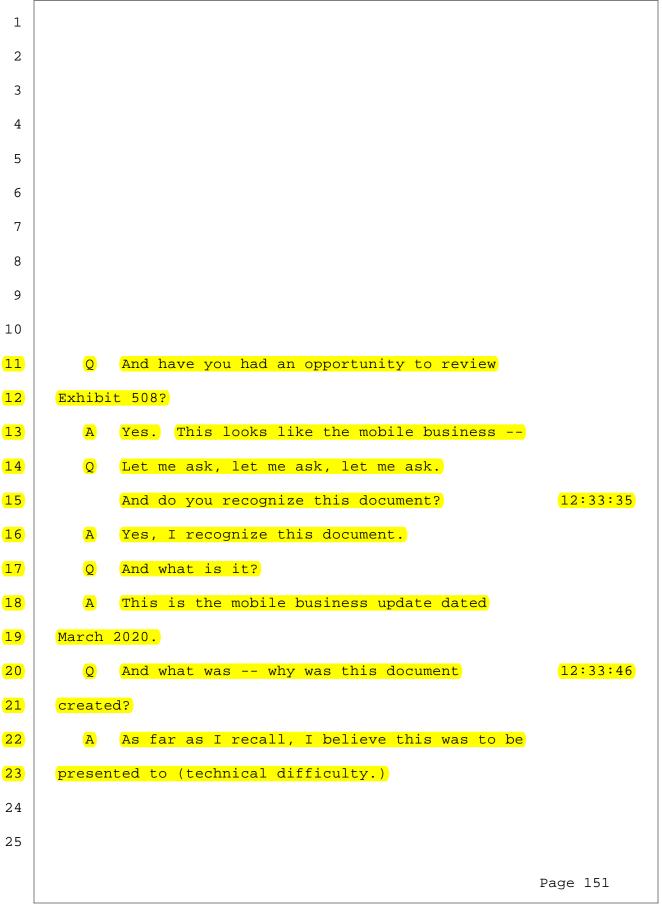
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 142 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

```
1
     numbers EPIC_00126433 through 487.
2
            So once that comes up, take the time to
3
     familiarize yourself with it, but to the extent I
     have specific questions, I will direct you to the --
4
5
     the places that I have questions about.
                                                            11:59:01
 6
 7
 8
 9
10
          (Exhibit 507 was marked for identification 11:59:15)
11
          and is attached hereto.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25
                                                           Page 127
```

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 143 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

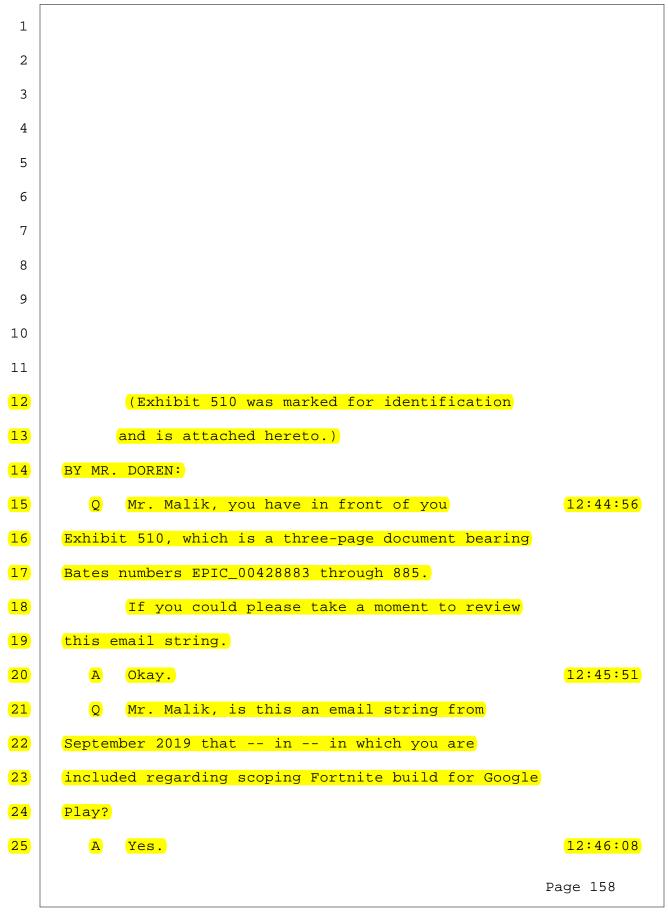


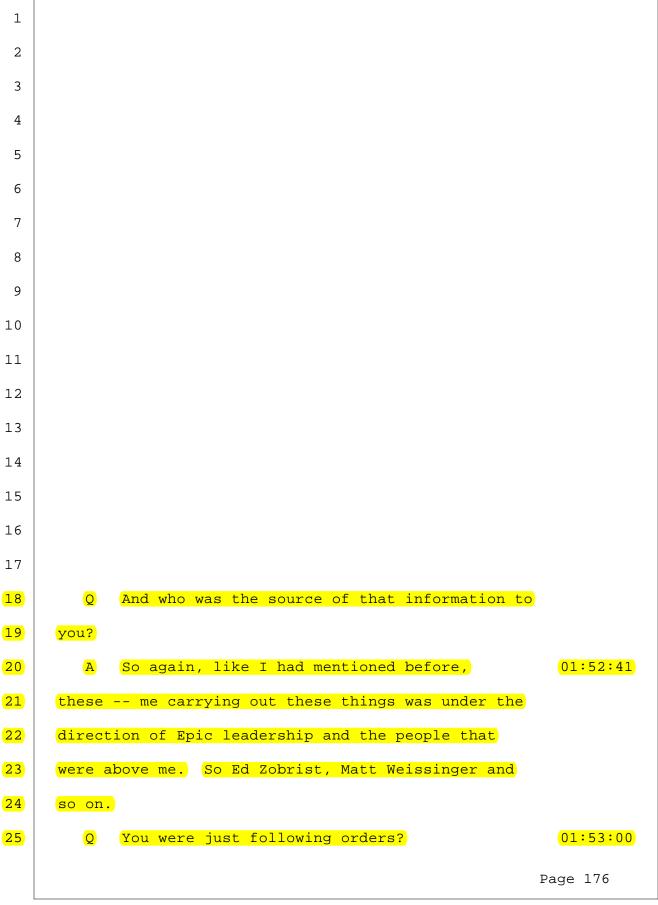


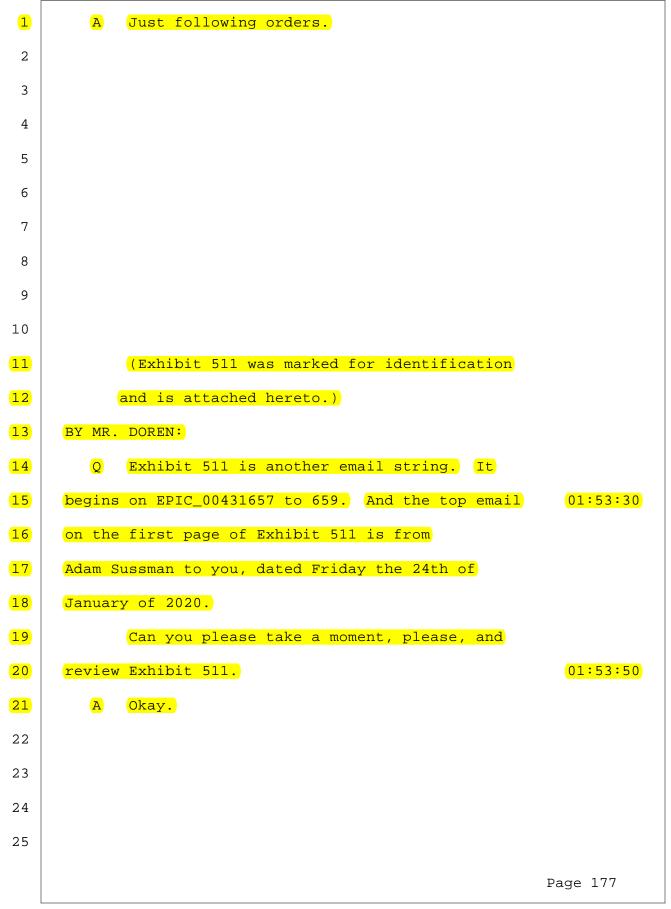


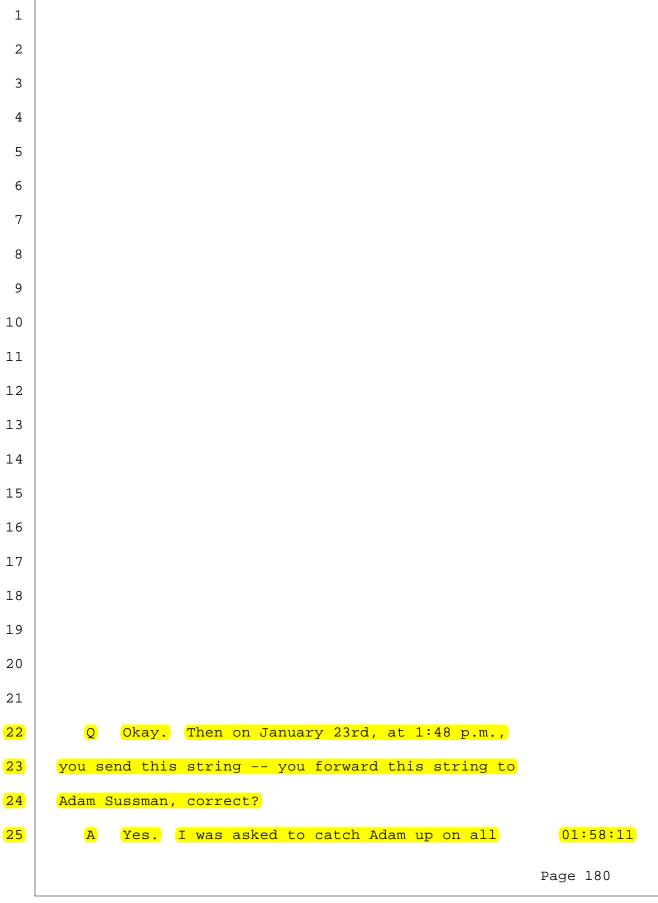
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 146 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	
2	
3	A I believe this presentation was put together
4	to be presented to Adam Sussman.
5	And who prepared this this presentation? 12:34:24
6	All of the people on that on which was
7	the mobile team at Epic. So you're number 5870, all
8	the people on this slide participated in putting
9	this presentation together.
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
	Page 152









# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 151 of 184 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	things	mobile, and so I started forwarding different	
2	emails	. This was one of them.	
3	Q	Okay. And you tell him that (as read):	
4		"For background, we had submitted a	
5		build of Google Play that included	01:58:25
6		<pre>Epic payment only, " correct?</pre>	
7	A	Yes, that is what I wrote there, uh-huh.	
8	Q	And that was an accurate statement?	
9	A	Yes.	
10	Q	And then you say (as read):	01:58:38
11		"Initially, we were flagged for two	
12		violations. One was for appearing	
13		to direct players to our sideload	
14		experience on web and the second for	
<mark>15</mark>		not including Google Play payment	01:58:45
16		services. We submitted a second	
17		build which was cleared of the 1st	
18		violation but still blocked due to	
19		violation of their payment policy.	
20		This is where we stand now."	01:58:56
21		And that's an accurate statement as of	
22	Januar	y 23rd, 2020?	
23	A	Yes. I summarize what had happened in a few	
24	short	paragraphs for the new executives to join.	
25			
			Page 181

#### Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)

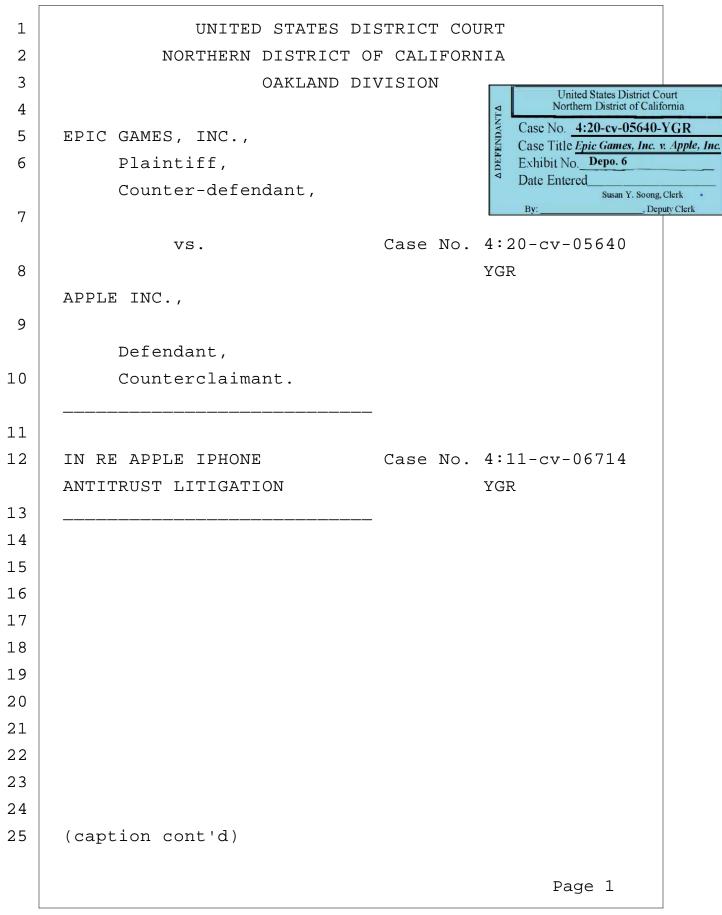
#### Deposition Designation of Mark Rein (February 10, 2021)

#### Time

Apple Inc.'s Designations	Epic Games, Inc.'s Designations
(Yellow Highlight)	(Blue Highlight)
14 minutes 53 seconds	19 seconds

۲۵	United States District Court Northern District of California
A DEFENDANT	Case No. 4:20-cv-05640-YGR Case Title Epic Games, Inc. v. Apple, Inc.
ΔDE	Exhibit No. Depo. 6  Date Entered
	Susan Y. Soong, Clerk •  By: Deputy Clerk

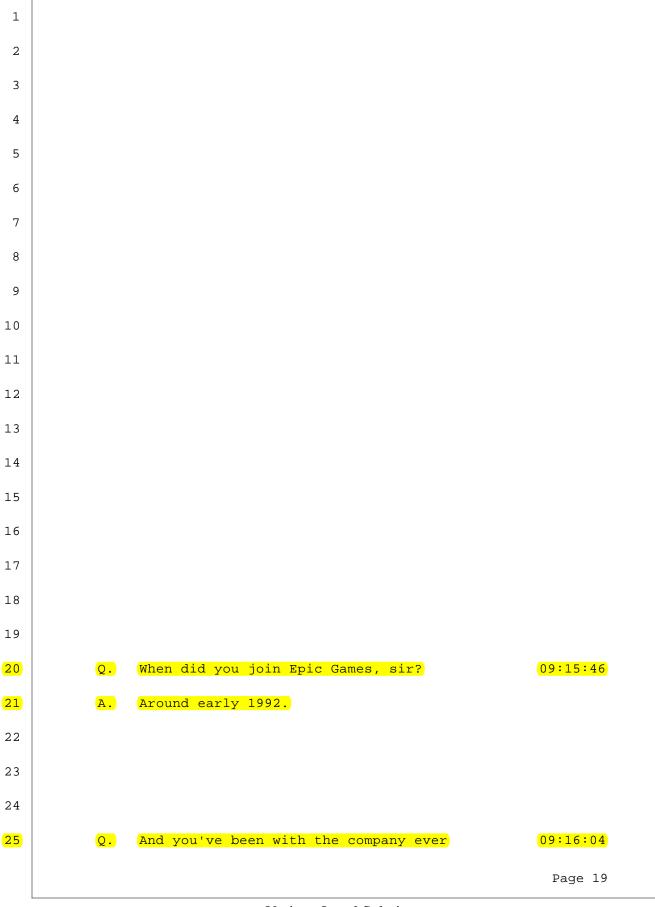
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 153 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



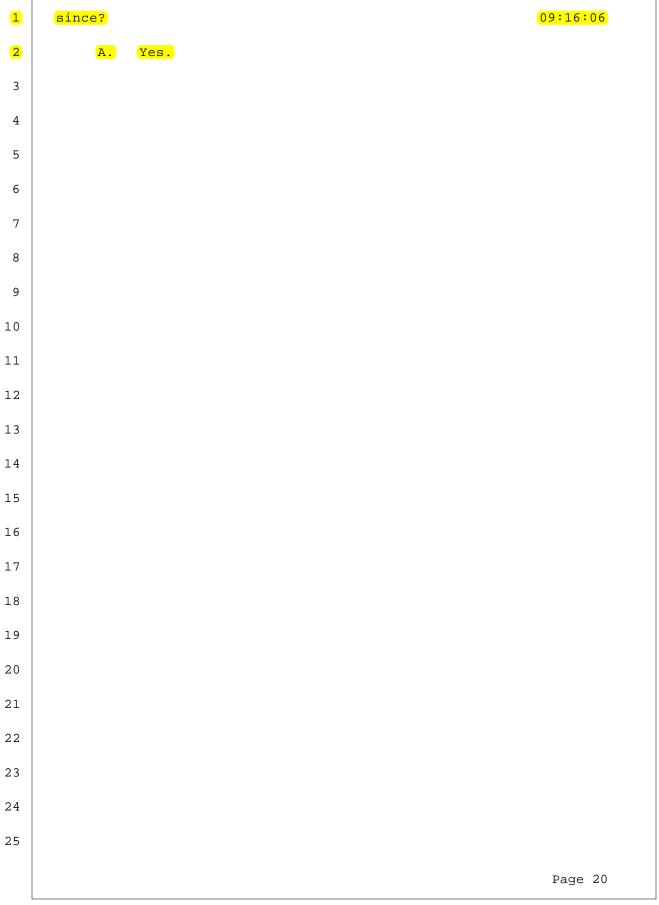
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 154 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

```
1
     DONALD R. CAMERON, et al.,
 2
          Plaintiffs,
 3
                                  Case No. 4:19-cv-03074
               vs.
                                             YGR
 4
     APPLE INC.,
5
          Defendant.
6
 7
8
9
10
11
      **HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**
12
                ZOOM DEPOSITION OF MARK REIN
13
     (Reported Remotely via Video & Web Videoconference)
14
             Ocala, Florida Deponent's location)
15
                 Wednesday, February 10, 2021
                            Volume I
16
17
18
19
20
     STENOGRAPHICALLY REPORTED BY:
21
     REBECCA L. ROMANO, RPR, CSR, CCR
     California CSR No. 12546
     Nevada CCR No. 827
22
     Oregon CSR No. 20-0466
     Washington CCR No. 3491
23
     JOB NO. 4453817
24
25
     PAGES 1 - 161
                                                    Page 2
```

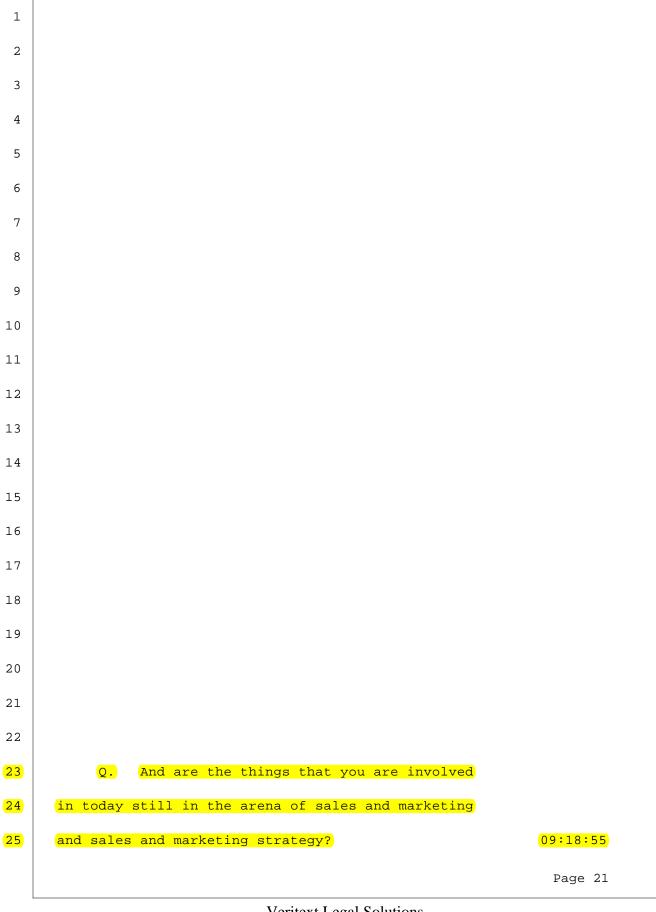
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 155 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



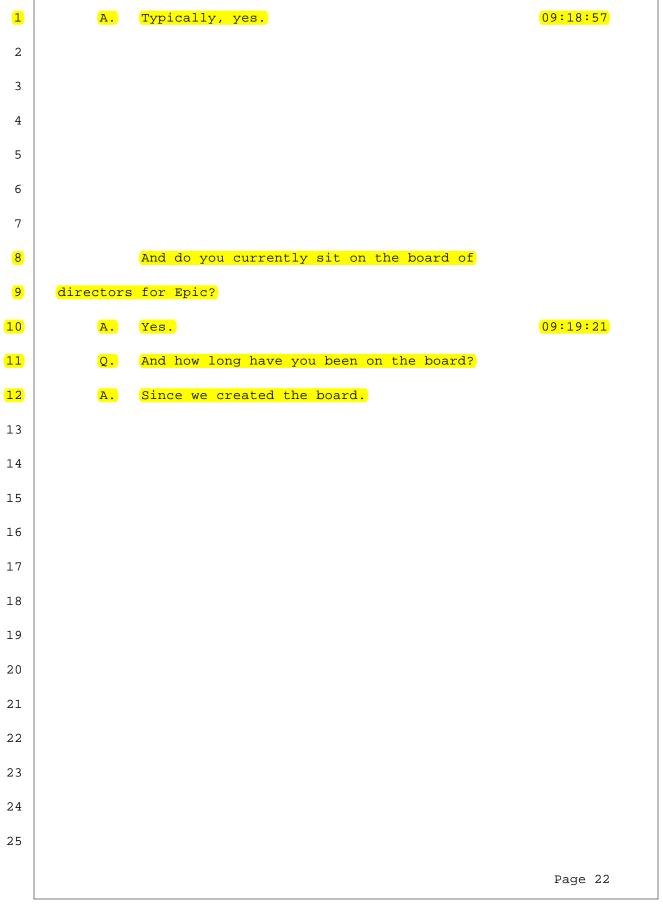
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 156 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



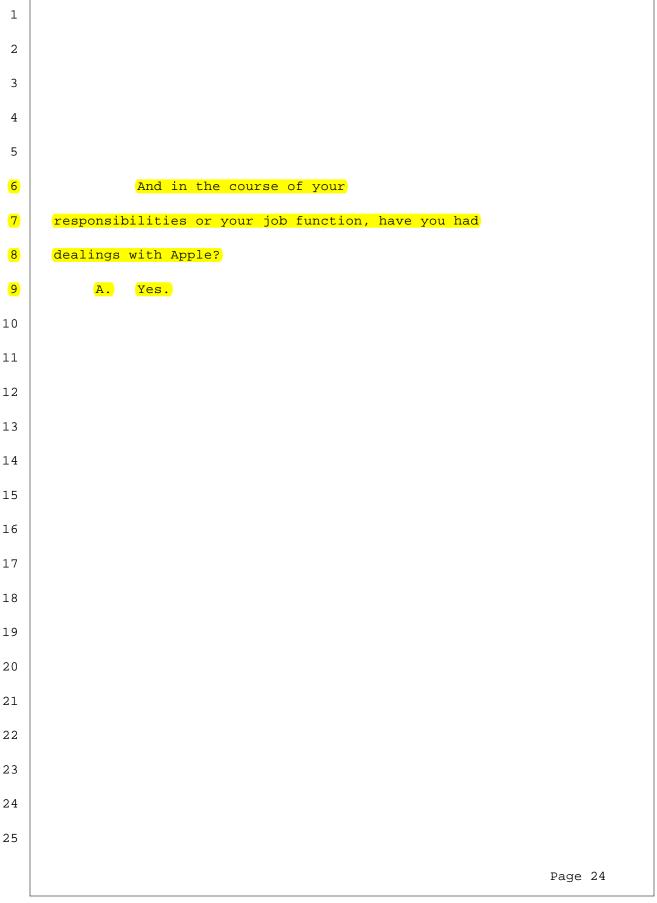
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 157 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



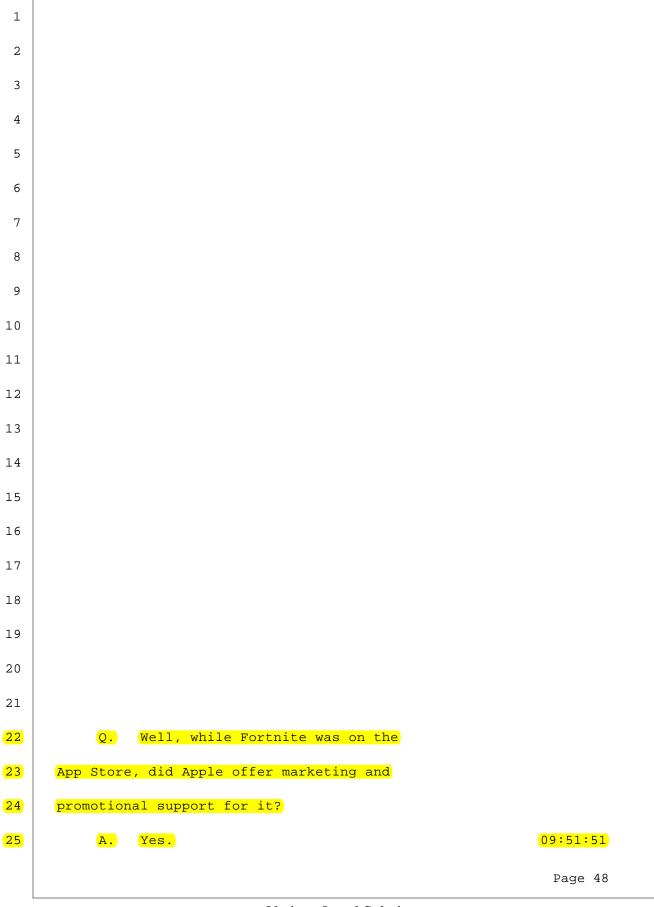
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 158 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 159 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



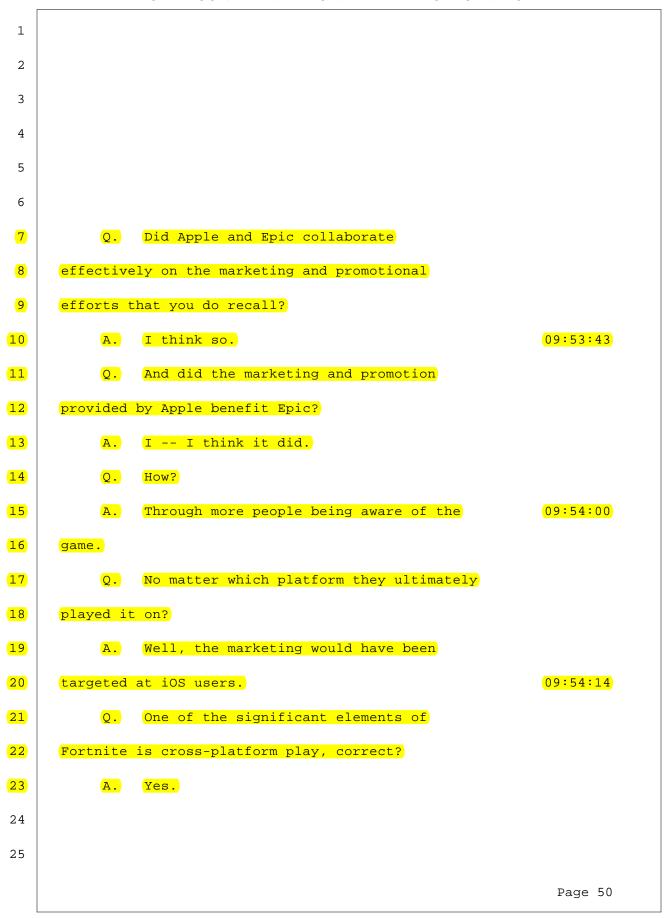
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 160 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 161 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	Q. Okay. And what sort of marketing and	09:51:51
2	promotional support did Apple provide?	
3	A. Apple would feature your app occasionally	
4	when you had something important going on.	
5	Q. You mean	09:52:08
6	A. Sorry. Apple would feature Fortnite	
7	occasionally when we had something important going	
8	on.	
9	Q. And what does that mean in the context of	
10	an App Store to feature it?	09:52:15
11	A. It means they would give it a prominent	
12	placement on one of the pages of the App Store.	
13		
14		
15		
16	Q. What other sorts of promotion and	
17	marketing did Apple provide for Fortnite?	
18	A. One time they put us up on stage and they	
19	demonstrated Fortnite at one of their I can't	
20	remember if it was a developer conference or a	09:52:54
21	product launch.	
22		
23		
24		
25		
		Page 49

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 162 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



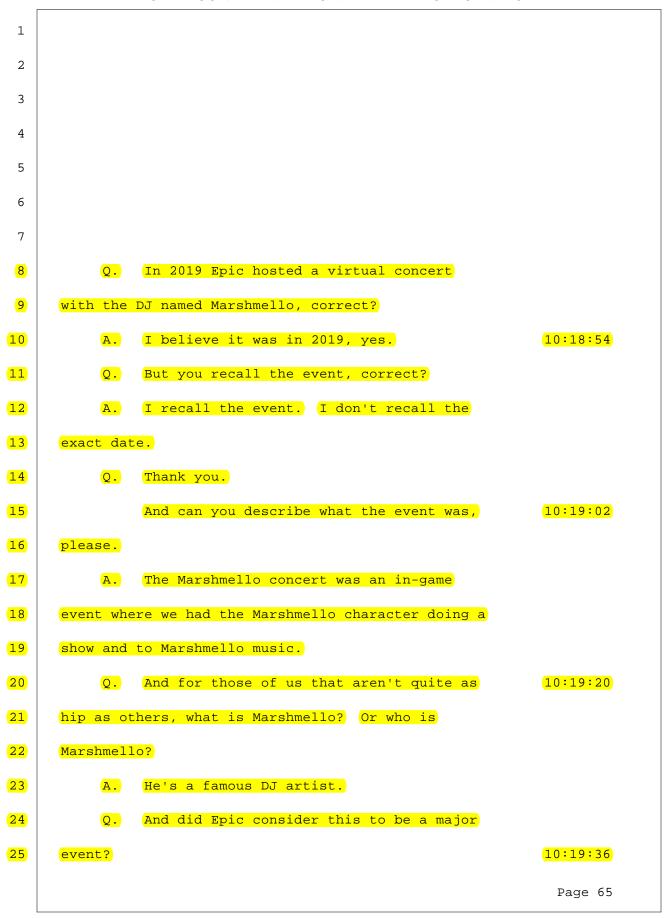
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 163 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 164 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	Q. (By Mr. Doren) Mr. Rein, while you	09:56:08
2	review that, I will describe for the record that	
3	this Exhibit 188 is a two-page document which	
4	contains an email string, and the first page of the	
5	exhibit is EPIC_00010165.	09:56:18
6	Please take a moment and review that	
7	document.	
8	THE DEPONENT: Yup. I've reviewed it.	
9	Q. (By Mr. Doren) Thank you very much, sir.	
10	First of all, do you recognize this as an	09:57:02
11	email chain in which you participated including	
12	various Epic colleagues on January from	
13	January 17th, 2018?	
14	A. Yes.	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 52

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 165 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



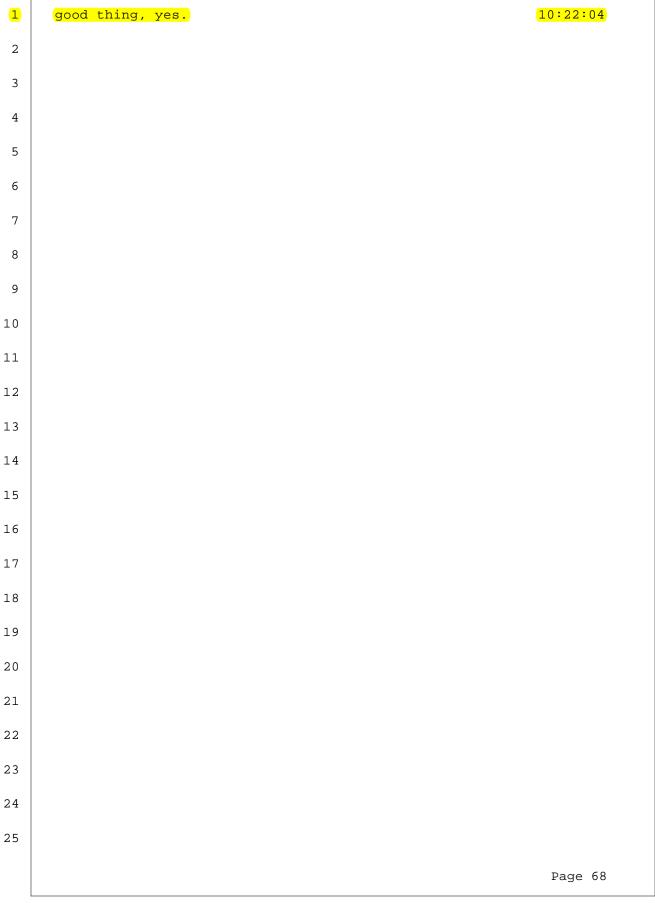
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 166 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	<b>A</b> .	Yes, I believe we did.	10:19:38
2	Q.	And when you say it was "an in-game	
3	experienc	e," was it within Fortnite?	
4	A.	It was within Fortnite.	
5	Q.	And was it available on all platforms?	10:19:47
6	A.	Yes, I believe it was.	
7	Q.	Meaning mobile and consoles and PCs?	
8	<b>A</b> .	Yes, whatever within Fortnite.	
9	Wherever	you played it.	
10	Q.	Was it available on the web-based	10:20:07
11	versions	of Fortnite?	
12	<b>A</b> .	What web-based versions of Fortnite?	
13	Q.	Those available, for example, through	
14	GeForce?		
15	<b>A</b> .	It should have been, yes.	10:20:22
16	Q.	Thank you.	
17		And did viewers purchase tickets to	
18	attend th	at event?	
19	<b>A</b> .	No.	
20	Q.	It was free?	10:20:30
21	A.	It was a free event.	
22	Q.	And did Apple offer marketing support for	
23	the Marsh	mello event?	
24	A.	I believe they did.	
25	Q.	And do you recall what it was?	10:20:47
			Page 66

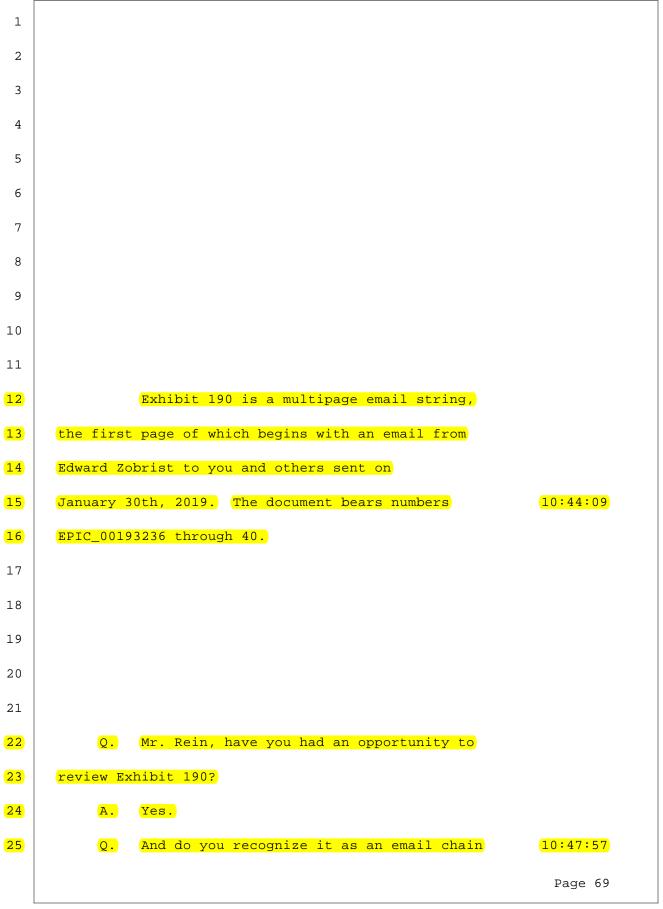
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 167 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	A. I believe they did some sort of featuring	10:20:52
2	on the store.	
3	Q. And when you say featuring on the store,	
4	what do you mean?	
5	A. I think they wrote a story about it or	10:21:01
6	placed a Fortnite imagery in in in a featured	
7	location on App Store.	
8	Q. And do you recall any other marketing or	
9	promotion that Apple did with Epic around the	
10	event?	10:21:19
11	A. Apple Music did some advertising, some	
12	outdoor advertising, I believe.	
13	Q. Do you recall?	
14	A. And featured and featured music from	
<mark>15</mark>	the event in Apple Music.	10:21:32
16	Q. And did you consider that to be a benefit	
17	to Epic's profile?	
18		
19		
20	THE DEPONENT: I it helped get more	10:21:49
21	people to listen to the music that was from the	
22	Fortnite Marshmello concert, perhaps.	
23	Q. (By Mr. Doren) And do you consider that	
24	to be a good thing?	
25	A. If you like that kind of music, it's a	10:22:02
		Page 67

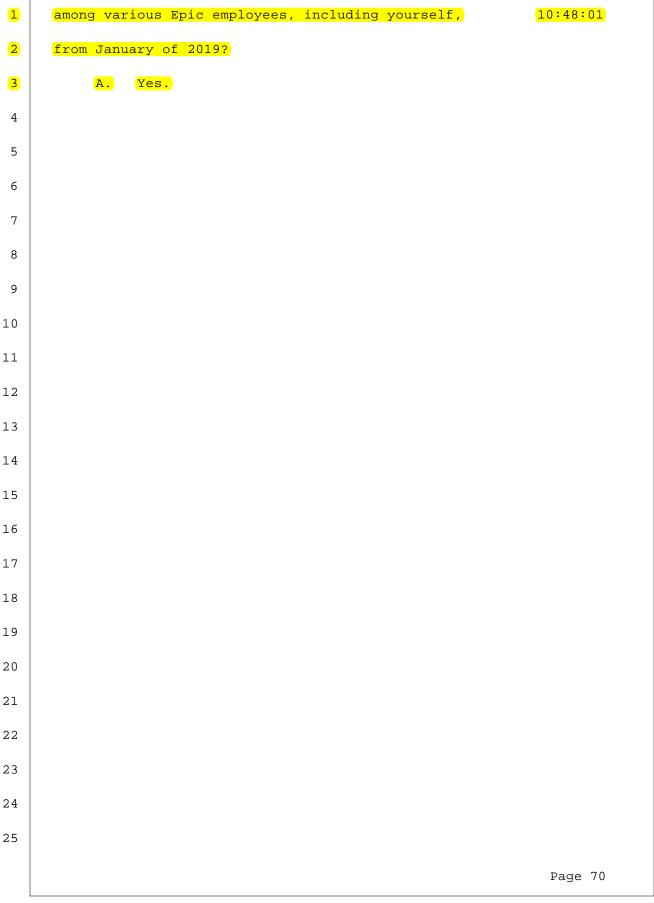
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 168 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



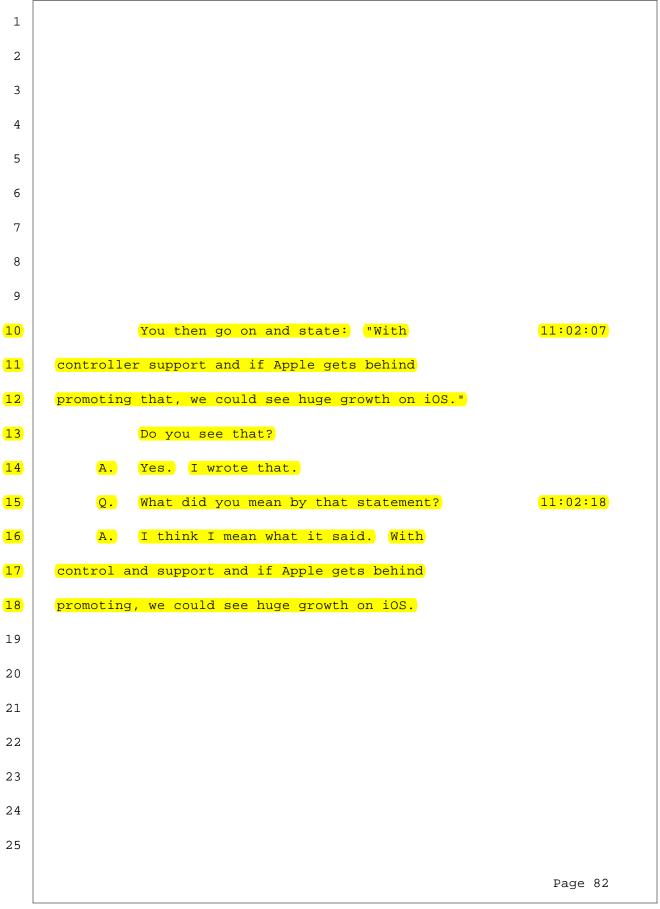
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 169 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 170 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



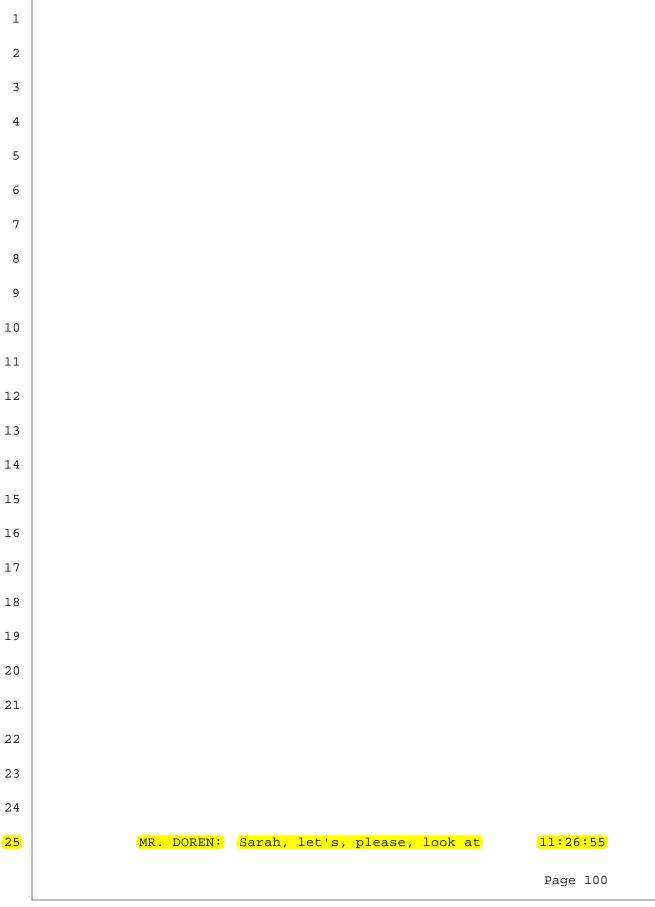
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 171 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 172 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1		
2	And you mentioned that and why is it a	
3	good thing to have Apple advertise your product?	
4	A. Any almost any advertising for your	
5	product is a good thing.	(11:08:18)
6	Q. And Apple is a a well-known brand?	
7	A. Yes.	
8	Q. And a highly regarded brand?	
9	A. Yes.	
10	Q. And being affiliated with Apple is	11:08:28
11	beneficial to Epic?	
12	A. I believe it's beneficial to Fortnite	
13	when they are marketing Fortnite.	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 87

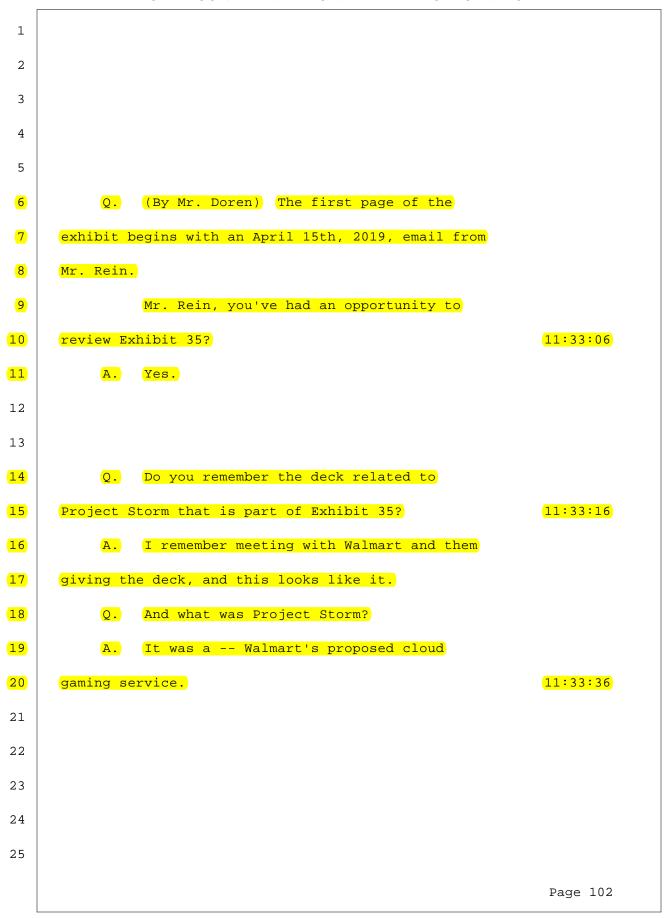
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 173 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



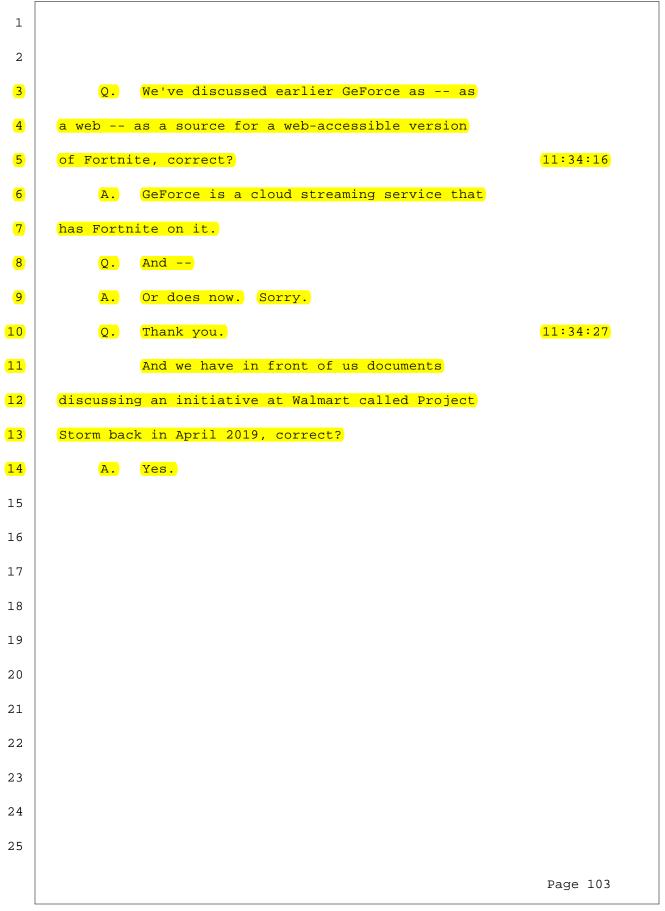
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 174 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	Tab 34, which is a document previously marked as	11:26:56
2	Exhibit 35.	
3	THE DEPONENT: [I'm looking at it.]	
4	Q. (By Mr. Doren) Great.	
5	And, Mr. Rein, we will be talking about	11:27:35
6	the last paragraph in your email on page 1, and I'm	
7	going to be asking you some questions about the	
8	deck attached that relates to Project Storm. But	
9	look at as much as the document as you need to and	
10	if in the course of our discussion you feel to need	11:27:56
11)	to look at it further, you may do so.	
12	A. I looked through it.	
13	Q. Thank you.	
14	Mr. Rein, Exhibit 35 begins with an email	
<u>15</u>	from you to Daniel Vogel with copies to various	11:32:09
16	Epic Games personnel. There's then a string of	
17	emails, and the document ends with what appears to	
18	be a deck entitled "Project Storm" dated	
19	March 2019, and the document bears Bates numbers	
20	EPIC_89876 through 889.	11:32:27
21		
22		
23		
24		
25		
		Page 101

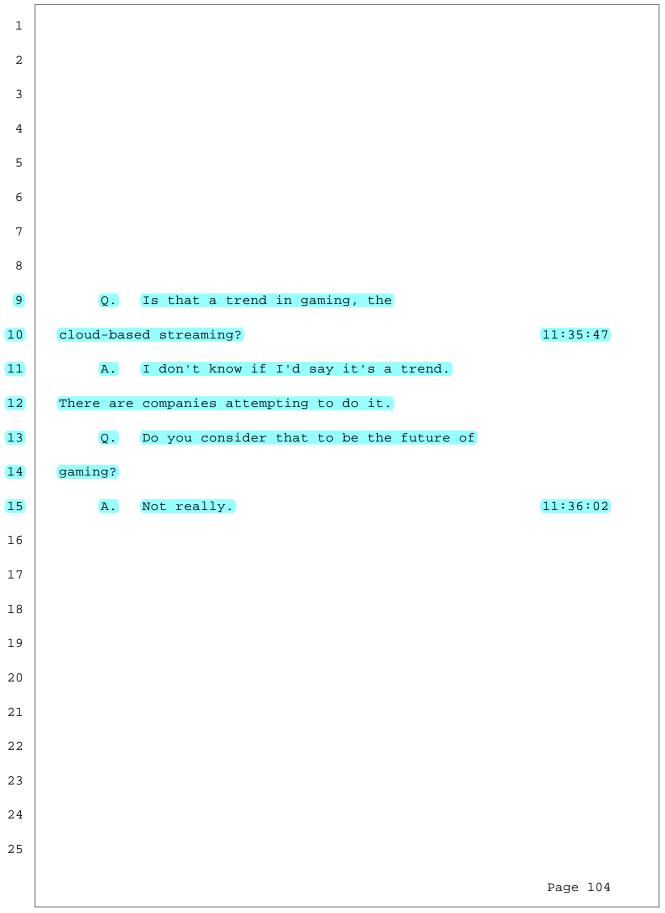
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 175 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 176 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 177 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 178 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1		
2	Q. Are you in negotiations with Amazon on	
3	its cloud-based service?	
4	A. We're talking to them about it.	
5	Q. What is the status what's the status	11:36:45
6	of those negotiations?	
7	(A.) We're still in discussions.	
8	Q. Has Epic provided a version of Fortnite	
9	to Amazon for testing?	
10	A. Well, Amazon's cloud service runs can	11:37:00
11	run anything that's on the Epic Games Store, so	
12	they don't we don't need to provide it to them.	
13	They're able to do it. But we have been working	
14	with them.	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 105

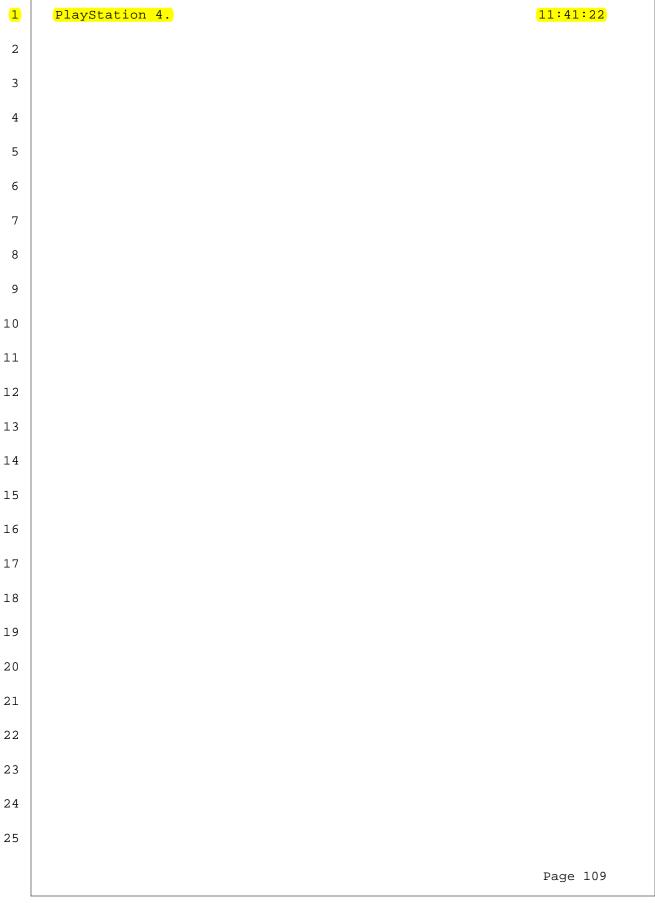
#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 179 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

```
1
 2
 3
          Q. (By Mr. Doren) Looking, please, at the
4
5
     first page of Exhibit 35. And in the third 11:38:59
     paragraph, you state: "I played Walmart's demo on
6
     an Android phone with an Xbox controller."
7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
          Q. (By Mr. Doren) It was -- it was what
24
     they had to offer as -- as of April 15 as their
25
     streaming service for you to try out; is that fair? 11:40:04
                                                              Page 107
```

# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 180 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	A. What I played in our office that date.	(11:40:07)
2	Q. And you played Walmart's demo on an	
3	Android phone with an Xbox controller, and the	
4	experience felt like playing on PS4 and superior to	
5	playing on Android or iOS.	11:40:22
6	Do you recall that experience?	
7	A. Vaguely.	
8	Q. And do you recall believing that it felt	
9	like playing on PS4?	
10	A. That's what I said in this email.	(11:40:35)
11	Q. And what about the experience made	
12	playing on the Android phone with an Xbox	
13	controller feel like playing on a PlayStation 4?	
14	A. I just remember it felt very solid, and	
<mark>15</mark>	it was the the graphics were very high	(11:40:52)
16	resolution and all the the details were PC-like	
17	and felt like being on a more powerful platform	
18	than a mobile platform.	
19	Q. And then you go on to say it felt	
20	superior to playing on Android or iOS.	11:41:06
21	And what did you mean by that?	
22	A. I I just answered that.	
23	Q. Okay. It felt like you were playing on	
24	something more powerful than a mobile platform?	
25	A. It felt like I was playing on a PC or	11:41:19
		Page 108

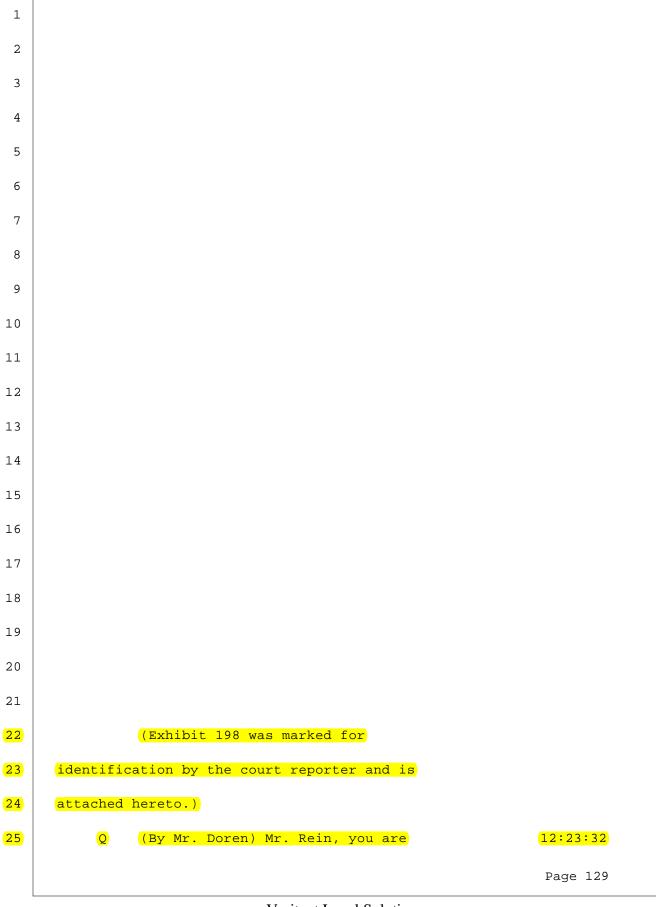
# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 181 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 182 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1		
1		
2		
3		
4	Q. Do you know what factors went into	
5	setting the 12 percent commission level?	11:42:45
6	A. Yes.	
7	Q. What do you know about that?	
8	A. The the cost of operating the service	
9	went into was one of the factors in deciding	
10	what was a fair amount to charge.	(11:43:05)
11	Q. And when you say cost of operating the	
12	service, what service are you referring to?	
13	A. The service of that we provide to	
14	to games that are sold in the Epic Games Store.	
<mark>15</mark>	Q. You mean the payment processing service	(11:43:22)
16	or do you mean something more than that?	
17	A. I'm payment processing would be one of	
18	the costs.	
19	Q. What other costs went into it?	
20	A. Some of the others could be the the	11:43:36
21	actual distribution cost, the internet bandwidth	
22	cost, the you know, the the cost of	
23	maintaining it.	
24	Q. Maintaining the store?	
25	A. Yes.	11:43:54
		Page 110

#### Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 183 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



# Case 4:20-cv-05640-YGR Document 666 Filed 05/14/21 Page 184 of 184 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	presented with Exhibit 198, which is a three-page	12:23:35
2	document which contains an email chain. The first	
3	email on the document at the top of the first page	
4	is dated March 14th, 2018 from Canon Pence to	
5	Daniel Vogel, with cc's to others, including	12:23:59
6	yourself. The document bears Bates	
7	No. EPIC_01919888, et cetera.	
8	Please take a moment and review this	
9	document.	
10	A. Okay. I reviewed it.	12:24:57
11	Q. Mr. Rein, you had an opportunity to	
12	review Exhibit 198?	
13	A. Yes.	
14	Q. And is this an email string that you	
<b>15</b>	received on March 14th, 2018 from Mr. Pence?	12:25:05
16	A. It appears to be, yes.	
17		
18		
19		
20		
21		
22		
23		
24		
25		
		Page 130